

BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS

WEDNESDAY, MAY 7, 2014

6:35 p.m.

-Proclamation for "Builder Safety Month" (Jim Sherman)

-Proclamation for the month of May 2014 as "BIKE MONTH" and also proclaim the week of May 12-16, 2014 as "Bike-To-Work Week" in Douglas County, Kansas (Jessica Mortinger)

CONSENT AGENDA

- (1) (a) Consider approval of Commission Orders;

REGULAR AGENDA

- (2) Consider approval of a revised Agreement between the Federal Highway Administration and Douglas County for Project No. 2012-14, Route 458 improvements from E 1050 to US-59 highway including a polymer concrete deck overlay for Bridge No. 12.00N-11.30E. (Keith Browning)
- (3) **CUP-13-00480**: Consider a Conditional Use Permit for a 60 meter (196') meteorological tower to monitor and collect wind data located east of the corner of N 400 Rd & E 1000 Rd and on the south side of N 400 Rd. Submitted by Tower Associates, for Donald & Jane Schwartz, property owners of record. Sandra Day will present the item.
- (4) **CUP-14-00002**: Consider a Conditional Use Permit for a 60 meter (196') meteorological tower to monitor and collect wind data located between E 400 and E 450 Roads and north of N 300 Road. Submitted by Tower Associates LLC on behalf of Charles and Doris Fawl, property owners of record. Sandra Day will present the item.
- (5) (a) Consider approval of Accounts Payable (if necessary)
(b) Appointments
Bert Nash Community Health Center Board of Directors (2) expire 04/2014
Douglas County Senior Services Board of Directors – (1) vacancy 04/2014
Heritage Conservation Council (3) positions expire 05/31/2014
Jayhawk Area Agency on Aging Board of Directors – (2) vacancies
Jayhawk Area Agency on Aging Tri-County Advisory Council – (2) vacancies
(c) Public Comment
(d) Miscellaneous
- (6) Adjourn

FRIDAY, MAY 9, 2014

3:00-4:00 p.m. – Ground Breaking for the new Public Works facility

WEDNESDAY, MAY 14, 2014

4:00 p.m.

-Executive Session for the purpose of consultation with County Counselor on matters, which would be deemed, privileged under the attorney-client relationship. The justification is to maintain attorney client privilege on a matter involving Douglas County

-Proclamation for Mental Health Month (David Johnson)

6:35 p.m.

-Hold public hearing concerning the advisability of organizing a new Fire District, to include all of Palmyra Township and to be known as "Fire District No. 2, County of Douglas, Kansas." At the conclusion of the public hearing, consider adopting a Resolution formally organizing the Fire District.

-Hold public hearing concerning the advisability of organizing a new Fire District, to include all of Willow Springs Township and to be known as "Fire District No. 3, County of Douglas, Kansas." At the conclusion of the public hearing, consider adopting a Resolution formally organizing the Fire District.

-Hold public hearing to receive public input and allow public participation concerning the advisability of selling a tract of real estate (adjacent to the new Public Work Facility) to KDOT. At the conclusion of the public hearing, consider adopting a Commission Order, authorizing the Chair to sign a real estate contract and other documents necessary to close the land sale.

WEDNESDAY, MAY 21, 2014 - 6:35 p.m. only

- Douglas County Heritage Conservation Council 2014 grant recommendations (Bobbi Radher)
- Consider a change order for the new public works facility project (Sarah Plinsky)

WEDNESDAY, MAY 28, 2014

WEDNESDAY, JUNE 4, 2014

- Consider a proclamation for "Relay for Life Week" (Betty Parks)

***Note:** The Douglas County Commission meets regularly on Wednesdays at 4:00 P.M. for administrative items and 6:35 P.M. for public items at the Douglas County Courthouse. Specific regular meeting dates that are not listed above have not been cancelled unless specifically noted on this schedule.*



Office of the County Commission

PROCLAMATION

Declaring May 2014 as
Building Safety Month in Douglas County

- WHEREAS:** Continuing efforts to address the issues of safety, energy efficiency, and resilience in buildings that affect our citizens, both in everyday life and in times of natural disaster, give us confidence that our structures are safe and sound; and
- WHEREAS:** Our confidence is achieved through the devotion of vigilant guardians – building safety and fire prevention officials, architects, engineers, builders, laborers and others in the construction industry – who work year-round to ensure the safe construction of buildings; and
- WHEREAS:** Modern building codes include safeguards to protect the public from natural disasters such as snowstorms, tornadoes, fires and earthquakes; and
- WHEREAS:** Building Safety Month is an opportunity to remind the public about the critical role of our communities' local code officials – largely unknown guardians of public safety – who assure us of safe, efficient and livable buildings; and
- WHEREAS:** This year's theme "Building Safety Month: Maximizing Resilience, Minimizing Risks" encourages all Americans to become more aware of the importance of building safety and to take appropriate steps to ensure that the places where we live, learn, work, worship and play are safe; and
- WHEREAS:** Each year, in observance of Building Safety Month, Americans are asked to consider projects to improve building safety and sustainability at home and in the community, and to acknowledge the essential service provided to all of us by local and state building departments and federal agencies in protecting lives and property.

NOW, THEREFORE, the Board of County Commissioners of Douglas County, Kansas, proclaims the month of May 2014, as

"BUILDING SAFETY MONTH"

ADOPTED this 7th day of May, 2014.

BOARD OF COUNTY COMMISSIONERS
OF DOUGLAS COUNTY, KANSAS

Nancy Thellman, Chairman

Jim Flory, Vice-Chair

Mike Gaughan, Member



Office of the County Commission

PROCLAMATION

Declaring May 2014 as "Bike Month" and
May 12-16, 2014 as "Bike-to-Work Week"
In Douglas County, Kansas

- WHEREAS:** For more than a century, the bicycle has been an important part of the lives of most Americans; and
- WHEREAS:** Today, millions of Americans engage in bicycling as an environmentally sound form of transportation, an excellent form of fitness, and a high quality family recreational activity; and
- WHEREAS:** Douglas County seeks to form and foster partnerships with bicyclists and incorporate bicycling as a part of the multi-modal regional transportation system designed to serve all Douglas County residents regardless of their travel mode choice; and
- WHEREAS:** The education of cyclists and motorists as to the proper and safe operation of bicycles and motor vehicles is important to ensure the safety and comfort of all roadway and path users; and
- WHEREAS:** Douglas County seeks to encourage symbiotic partnerships with organizations to promote bicycle awareness and education through the efforts of the Lawrence-Douglas County Bicycle Advisory Committee and other groups; and
- WHEREAS:** The League of American Bicyclists and independent cyclists throughout Kansas are promoting greater public awareness of bicycle operation and safety education in an effort to reduce accidents, injuries and fatalities; and
- WHEREAS:** The League of American Bicyclists has designated May as National Bike Month; and
- WHEREAS:** The Lawrence-Douglas County Bicycle Advisory Committee has requested that the Douglas County Commission proclaim the month of May 2013 as Bike Month.

NOW, THEREFORE, Be it proclaimed by the Board of County Commissioners of Douglas County, Kansas, that the month of May 2014 be recognized as "**Bike Month**" and also proclaim the week of May 12-16, 2014 as "**Bike-To-Work Week**" in Douglas County, Kansas.

ADOPTED this 7th day of May, 2014.

**BOARD OF COUNTY COMMISSIONERS
OF DOUGLAS COUNTY, KANSAS**

Nancy Thellman, Chairman

Jim Flory, Vice-Chair

Mike Gaughan, Member



DOUGLAS COUNTY PUBLIC WORKS

1242 Massachusetts Street
Lawrence, KS 66044-3350
(785) 832-5293 Fax (785) 841-0943
dgcopubw@douglas-county.com
www.douglas-county.com

Keith A. Browning, P.E.
Director of Public Works/County Engineer

MEMORANDUM

To : Board of County Commissioners

From : Keith A. Browning, P.E., Director of Public Works/County Engineer

Date : May 1, 2014

Re : Consider revised Federal Lands Access Program Agreement with FHWA
Combined Project Agreement and Reimbursable Agreement
Project No. 2012-14
Route 458 improvements from E 1050 to US-59
Polymer concrete deck overlay for Bridge No. 12.00N-11.30E

You will recall we were successful in obtaining a commitment of \$500,000 in Federal Lands Access Program (FLAP) funding from the FHWA to apply towards construction of the referenced Route 458 improvements. During the April 7, 2014 meeting, the BoCC approved a Project Agreement with the Federal Highway Administration (FHWA) concerning the project. Prior to the April 7 meeting, we were told the FHWA requires we sign two agreements, i.e. a Project Agreement and a Reimbursable Agreement. The FHWA sent us the Project Agreement, which was approved by the BoCC, and we were told the Reimbursable Agreement would follow.

After the April 7 BoCC meeting, the FHWA notified us they wanted to revise the Project Agreement, and combine the Project Agreement and Reimbursable Agreement into one document. The attached Agreement is the latest version of the revised, combined agreements document.

As with the previously approved Project Agreement, the revised Agreement defines roles and responsibilities of each party. In summary, the FHWA reviews environmental documentation and construction plans to ensure conformance with the stated project scope. Douglas County prepares plans, obtains necessary NEPA permits, acquires right-of-way, relocates utilities, and constructs project.

As was the case with the previously approved Project Agreement, the revised Agreement makes Douglas County responsible for all project costs in excess of \$500,000. The CIP includes \$1,600,000 for the Route 458 improvements, and \$250,000 for the deck overlay on Bridge No. 12.00N-11.30E. Please note that the Breakdown of Costs in Section IV of the revised Agreement was based on very preliminary cost estimates. Our most current project cost estimate is attached. FHWA's commitment of \$500,000 in FLAP funding is not affected by the lower overall project cost estimate.

MEMORANDUM

Page Two

We have no concerns with terms of the revised Agreement. As of this writing, we have not received copies of the revised Agreement signed by the FHWA's Division Engineer. If we do not receive the signed agreements prior to the BoCC meeting, we recommend the BoCC consider the revised Agreement, and authorize the BoCC Chair or County Administrator to sign the original copies of the agreement, signed by the FHWA, when they are received.

Action Required: Approval of a revised Agreement between the Federal Highway Administration and Douglas County for Project No. 2012-14, Route 458 improvements from E 1050 to US-59 highway including a polymer concrete deck overlay for Bridge No. 12.00N-11.30E.

**Federal Highway Administration
Federal Lands Highway
AGREEMENT**

DTFH68-14-E-00090

PARTIES TO THE AGREEMENT

Reimbursing Organization	Organization to be Reimbursed
Federal Highway Administration Central Federal Lands Highway Division 12300 West Dakota Ave Lakewood, CO 80228	Douglas County, KS 1100 Massachusetts Avenue Lawrence, Kansas 66044

Appropriation Chargeable 1516200458001-543.CN.G200.20-1620000000	DUNS Number TIN: 48-6033538 DUNS:809710346
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POINTS OF CONTACT FOR THE AGREEMENT

Reimbursing Organization Finance Point of Contact	Organization to be Reimbursed Finance Point of Contact
Name: Suzanne Schmidt Address: 12300 West Dakota Ave Lakewood, CO 802 Phone: 720-963-3356 E-mail: Suzanne.schmidt@dot.gov	Name: Keith A. Browning Address: 1242 Massachusetts St Lawrence, Kansas 66044 Phone: 785-832-5293 E-mail: kbrowning@douglas-county.com

Reimbursing Organization Program Point of Contact	Organization to be Reimbursed Program Point of Contact
Name: Allen Grasmick Address: 12300 West Dakota Ave Lakewood, CO 80228 Phone: 720-963-3664 E-mail: allen.grasmick@dot.gov	Name: Terese A. Gorman Address: 1242 Massachusetts St Lawrence, Kansas 66044 Phone: 785-832-5293 E-mail: tgorman@douglas-county.com

PERIOD OF PERFORMANCE	LEGAL AUTHORITY
April 30, 2014 – May 5, 2015	23 U.S.C. 201 & 204

TOTAL AGREEMENT AMOUNT	PAYMENT TERMS AND SCHEDULE
TOTAL AGREEMENT AMOUNT: \$500,000	EFT; Monthly

DESCRIPTION OF SUPPLIES, SERVICES, AND DELIVERABLES
See attached SOW

AUTHORIZED APPROVALS

For Reimbursing Organization	For Organization to be Reimbursed
Signature _____ Date _____	Signature _____ Date _____
Title _____	Title _____

Statement of Work

Agreement No. DTFH68-14-E-00090

4/22/14

I. Introduction: The Federal Highway Administration, Central Federal Lands Highway Division (FHWA-CFLHD), on behalf of the Kansas Access Programs Decisions Committee, will provide Federal Lands Access Program funding to the Douglas County Public Works Department for the reconstruction of CR458. The FHWA-CFLHD shall also be referred to as the Requesting Agency. Douglas County shall also be referred to as the Servicing Agency.

II. Location: The project is located in Douglas County, approximately 30 miles to the southeast of Topeka, KS.

III. Work Required: Route 458 will be reconstructed beginning approximately 450 feet west of US-59 and then extend west 2.5 miles until the road reaches the U.S. Army Corps of Engineers property below the Clinton Lake Dam. The improvements include the construction of 6.5 feet wide paved shoulders, flat bottom ditches along each side of the road, underground storm sewer in the residential area, extension of existing culverts to provide adequate clear zone, and flattening foreslopes and backslopes to meet current safety standards. The existing pavement will be rehabilitated by milling, full depth patching, and a 3-inch hot asphalt concrete pavement overlay. The project also includes a multi-layer polymer overlay repair to the existing concrete bridge deck located approximately 1.7 miles west of US-59.

Federal Land Management Agency Coordination

The County has coordinated project development with the US Army Corps of Engineers, Kansas City District, hereinafter referred to as “Corps”, whose support of the project is documented by their digital signature and support acknowledgement in the KS FLAP application. The County has the primary responsibility to coordinate their activities with the Corps.

National Environmental Policy Act (NEPA)

The FHWA will complete the NEPA document, which is anticipated to be a Categorical Exclusion. The servicing agency will provide all documentation of coordination efforts to date.

Utilities

Additional work includes the relocation of utilities. The utility agencies have been notified of this project and have been provided preliminary plans. If the utility is located within the existing right-of-way, the utility will relocate at their expense. Utilities located outside of the existing right-of-way will be reimbursed for all relocations using local CIP funding. The County will submit “List of Utilities and Status of Same, KSDOT Form 1306 prior to PS&E approval.

Rights-of-Way

Right-of-Way is required to construct the project. Approximately 18 tracts are required, of which all landowners have been contacted, and no condemnation is anticipated. The servicing agency personnel are knowledgeable of federal ROW acquisition procedures as annotated in Kansas Department of Transportation “Right of Way Acquisition Guide for Local Public Agencies”, and will acquire right-of-

way as needed to construct these improvements. Funding for right-of-way will be provided by the County Capital Improvement Plan (CIP).

Permits

Permits required for the project include the NPDES and NWP 404/401. The County will acquire these permits.

Plans, Specifications and Estimate

The County will provide the engineering services to produce the Plans, Specifications and Estimate for this project. Project design shall be in accordance with accepted engineering practices and all applicable state, AASHTO and federal criteria. See Section 5.2 of the KS DOT LPA Manual and Guidance for further guidance. The County will document any exceptions by a written request to FHWA for a “design exception” using a summary format similar to the form in Figure 5.1 in the KS DOT LPA Manual and Guidance. All supporting documentation should be included with the submittal as attachments to the summary form. Supporting documentation should be consistent with Section 2.4.3 of the KDOT Design Manual, Volume 1, Road Section. A request for a design exception may be made at any time in the design process when sufficient information is available to adequately evaluate the alternative solutions. All design exceptions are subject to approval by the FHWA.

IV. Breakdown of costs: The following table represents the funding sources and amounts for the subject project:

Fund Source	Amounts	Cost Share
Local Matching Share-Douglas County, Kansas	\$2,071,000	80.54%
Kansas Federal Lands Access Program Funds	\$500,000	19.46%
TOTAL	\$2,571,000	

The requesting agency agrees to provide the Federal lands access program funds as noted in the table above. In addition, any increased costs or overruns will be covered by the County.

Matching or cost sharing requirements may be satisfied following the obligation of funds to the project by: allowable costs incurred by the State or local government, cash donations, the fair and reasonable value of third party in-kind contributions (but only to the extent that the value of the costs would be allowable if paid for by the party responsible for meeting the matching share), including materials or services; however no costs or value of third party contributions may count towards satisfying the matching share requirements under this agreement if they have or will be counted towards meeting the matching share requirements under another federal award.

Costs and third party contributions counting toward satisfying a cost sharing or matching requirement must be verifiable from the records of the party responsible for meeting the matching requirements. The records must demonstrate how the value of third party in kind contributions was derived. Voluntary services sought to be applied to the matching share will be supported by the same methods that the party to this agreement uses to support allocability of personnel costs. Any donated services provided by a third party will be valued at rates consistent with those ordinarily paid by employers for similar work in the same labor market. Supplies furnished will be valued at their market value at the time of donation.

Donated equipment or space will be valued at fair rental rate of the equipment or space. All records associated with valuations or costs under section K shall be accessible and be maintained for three years following project close-out.

See Section X. Financial Management, part D.6. for submission requirements.

V. Deliverables and Responsible Party: The following table summarizes roles and responsibilities for the execution of the project delivery (project development and construction) processes. The County is the primary performer of activities. CFLHD is responsible for stewardship and oversight (S&O) activities and technical assistance (TA), as required for successful execution of the project and compliance with regulatory requirements. S&O and TA activities have been modeled from the KS DOT Local Public Agency (LPA) Manual and Guidance. The County is a certified LPA and agrees to maintain the certification for the Period of performance. Since the County is certified FHWA involvement has been adjusted appropriately.

Work Item	Douglas County	FHWA S&O	FHWA TA	Remarks
Planning and Programming				
Project is on approved program of projects.	Provide	Review	None	Provide documentation
Project is on a TIP or STIP	Provide	Review	None	Provide documentation
Project agreement with scope, schedule, & budget	Sign	Provide	None	
Consultant Selection	Provide	Review	None	Certification stating consultant services were procured following the Brooks Act.
Environment				
NEPA Compliance	Review	File	Provide	<ul style="list-style-type: none"> • Anticipated CATEX • FHWA to complete • Required prior to final design and ROW acquisition
Permits	Provide	File	None	<ul style="list-style-type: none"> • Form 1307 • Required prior to letting.
PS&E Development				
Design exceptions	Provide	Concur	None	Summary format similar to Figure 5.1 in LPA Project Development Manual.
Utility Certification	Provide	Concur	None	Form 1304
ROW Certification	Provide	Concur	None	<ul style="list-style-type: none"> • Form 1306 • Can't proceed until NEPA complete • Required prior to letting

Work Item	Douglas County	FHWA S&O	FHWA TA	Remarks
Final PS&E	Provide	Concur	None	Submit: <ul style="list-style-type: none"> • Final Check Plans • Updated Cost Estimate • Form 1307 – Including e-copy of permits obtained to date • Final Special Provisions • Required Federal contract clauses • Any other applicable reports or project documentation
Acquisitions				
Bid Evaluation	Provide	Concur	None	<ul style="list-style-type: none"> • Provide all bidder documents • Concurrence prior to award
Contract package	Provide	File	None	
Contract	Provide	File	None	
Construction				
Inspection	Provide	None	None	
Final Inspection	Schedule	Attend	None	Provide 14 days notice

VI. Period of Performance:

Description	Schedule Finish Date	Comments
Reimbursable Agreement	April 30, 2014	Funding Reimbursement Document
Environmental Compliance	May 8, 2014	CATEX expected
ROW Acquisition	May 2014	
Advertise Construction Contract	May 2014	
Construction NTP	July 2014	
Construction Completed	November 2014	

All work shall be completed no later than May 5, 2015.

VII. Technical Representative: The Contracting Officer’s Technical Representative for this reimbursable agreement is Mr. Allen Grasmick, Access Program Coordinator and can be contacted at 720-963-3664 or by emailing Allen.Grasmick@dot.gov.

VIII. Project Contacts: The following table provides the points of contact for this project. They are to be the first persons to deal with any issues or questions that arise over the implementation of each party’s role and responsibility for this agreement.

Name/Title	Organization	Address/Phone Number/Email
Terese Gorman Engineering Division Manager	Douglas County Public Works	tgorman@douglas-county.com 785.841.5332
Susanna Gehrt Operations Project Manger	US Army Corps of Engineer. KC District	Susanna.G.Gehrt@usace.army.mil 816.389.3635
Allen Grasmick Access Program Coordinator Stewardship and Oversight	FHWA-CFLHD	Allen.grasmick@dot.gov 720-963-3664
Jeff Berna Environmental Specialist	FHWA-Resource Center	Jeffrey.Berna@dot.gov 720-963-3641

IX. FHWA Furnished Data: As defined in Section V. Deliverables and Responsible Party, the FHWA will provide the NEPA document.

X. Financial Administration:

A. Total Agreement Amount: See attached Grant Agreement form

B. Reimbursable Payment: The servicing agency will receive payment on a monthly basis upon receipt of an invoice of costs incurred and authorized by the requesting agency (FHWA, Central Federal Lands Highway Division). The servicing agency is limited to recovery of actual costs only, with a progress report reflecting the progress to the date of the invoice. The servicing agency should not incur costs which exceed the maximum cost stated in this RA without authorization from the FHWA. Such authorization will be in the form of a modification to this agreement signed by the FHWA Contracting Officer. The servicing agency shall submit a monthly progress report to the CFLHD COTR listed below which notes obstacles encountered and suggested solutions, progress to date, and identifies costs and expenses for services rendered or supplies delivered per the SOW. Include back-up data with each request for payment. Back-up data includes all documents needed to support the requested reimbursement, such as record of contract payments, receipts, payrolls, and so on. The servicing agency will submit all Billings to the Government with Support Data as costs are billed, and one final and complete billing marked **Final Invoice** for reimbursement of all eligible costs incurred no later than 180 days after the end of the period of performance as stated on the Grant Agreement form. If the servicing agency does not submit a Final Bill within 180 days of the completion date the Government may close the agreement unilaterally and deobligate all remaining funds.

C. Prompt Payment: The Government considers payment as being made the day a check is dated or the date of an electronic funds transfer (EFT). All days referred to in this clause are calendar days. However, when the due date falls on a Saturday, Sunday, or legal holiday, the designated payment office may make the payment on the following working day without incurring a late payment penalty. The due date for making payments by the designated payment office is the 30th day after the designated billing office receives a proper invoice from the servicing agency, or the

30th day after Government acceptance of services performed or supplies delivered. The Prompt Payment regulations do not require the Government to pay interest penalties if based on improper submission of invoices and incorrect EFT information provided by the servicing agency. The Government will compute any interest penalty in accordance with the Office of Management and Budget prompt payment regulations (5 CFR Part 1315).

D. Method of Billing and Proper Submission of Invoices: The Government shall pay the servicing agency, upon the submission of proper invoices, the prices stipulated in the agreed-upon cost budget for services rendered or supplies delivered, as stated in the SOW. The servicing agency must submit an acceptable invoice to CFLHD that, at a minimum, includes the following:

1. Servicing agency name/address
2. Servicing agency finance contact with phone number and email address
3. Accounting Information
4. CFLHD (requesting agency) agreement number: DTFH68-14-E-00090 Billing period.
5. Documents supporting all costs submitted for reimbursement. (i.e. rental agreements, POV mileage sheet, printing/copying invoices, etc., or itemized financial summary of expenditures in accordance with accepted cost budget).

Submit support documents and Progress Report to:

CFLHD
Central Federal Lands Highway Division
12300 West Dakota Avenue
Lakewood, CO 80228
Attn: Allen Grasmick

Submit invoice to:

US Mail
Federal Lands Highway A/P, AMZ-150
PO Box 268865
Oklahoma City, OK 73125

or
Fed Ex
Federal Lands Highway A/P Branch, AMZ-150
6500 S. MacArthur Blvd
Oklahoma City, OK 73169

or
Email: 9-AMC-AMZ-CFLInvoices@FAA.GOV

E. Administrative Fee: Unless otherwise explicitly stated in this Agreement, CFLHD shall not be liable for any additional administrative fees.

XI. MODIFICATIONS

Any modifications to the Agreement must be made in writing and agreed to by both parties. Such authorizations are not binding unless they are in writing and signed by personnel authorized to bind each of the agencies.

XII. AGREEMENT COMPLETION

When the requesting agency has accepted all deliverables, the servicing agency will provide a written project evaluation and final accounting of project costs to the requesting agency contact.

XIII. TERMINATION

Either agency may terminate this agreement upon 120-calendar day (or as designated in the statement of work) prior written notification to the other agency. If this agreement is terminated by the servicing agency, its liability shall extend only to the release of its work products and related materials to the requesting agency by the effective date of termination. If this agreement should be terminated by the requesting agency, its liability shall extend only to pay for the actual and reasonable costs of the items/services rendered and the costs of any non-cancelable obligations incurred in accordance with the terms of this agreement prior to the effective date of termination.

Date: 3/7/2014
By: KAB

PROJECT COST ESTIMATE
Route 458 from Banning's Corner to US-59*
Proj. No. 2012-14

Construction*	\$ 1,635,948
Contingencies (10%)	\$ 163,595
Total Estimated Construction Cost	\$ 1,799,543
FLAP funding**	\$ 500,000

DGCO Costs:

Construction	\$ 1,299,543
Engrg. Design	\$ -
Right-of-Way	\$ 50,000
Waterline Relocation	\$ 12,993
Phone Line Relocation (SBC)	\$ 128,831
Power Line Relocation (Westar)***	\$ -
Materials Testing	\$ 4,000

Total DGCO Costs **\$ 1,495,367**

*Includes polymer concrete overlay for Bridge No. 1200-1130

**Federal Lands Access Program (FLAP)

***Power poles in existing R/W

PLANNING COMMISSION REPORT
Regular Agenda – Public Hearing Item

PC Staff Report
4/21/2014

**ITEM NO. 3: CONDITIONAL USE PERMIT; METEOROLOGICAL TOWER; N 400 ROAD
 AND E 1000 ROAD (SLD)**

CUP-13-00480: Consider a Conditional Use Permit for a 60 meter (196') meteorological tower to monitor and collect wind data located east of the corner of N 400 Rd & E 1000 Rd and on the south side of N 400 Rd. Submitted by Tower Associates, for Donald & Jane Schwartz, property owners of record.

STAFF RECOMMENDATION: Staff recommends approval of the Conditional Use Permit for the meteorological tower and forwarding it to the County Commission subject to the following conditions:

- 1) Approval of the Conditional Use Permit shall be limited to 6 years from the date of the County Commission approval. Any extension of the time limit shall be allowed only per written request from the applicant and approval for extension by the County Commission following public notice.
- 2) The provision of a revised site plan that adds the following notes to the face of the drawing:
 - a) *"A sign shall be posted on the tower or the exterior fence around the base of the tower with the name and telephone number of the tower owner/operator."*
 - b) *"Use of this tower shall be limited to meteorological equipment only and will not be allowed for use by telecommunication providers."*
 - c) *"This tower will be removed at the end of the Conditional Use Permit approval period."*
 - d) *"A change of ownership of the tower shall require a new Conditional Use Permit and public hearing at the Planning Commission."* This will allow review of the intended use of the tower and public notice of the proposed change.

Reason for Request: *"Tower Associates would like to install a meteorological tower to monitor and collect wind data over a period of time."*

ATTACHMENTS

1. Site plan
2. Project description – application supplement
3. Resolution 13-12-5
4. Location of Met tower applications
5. Proposed regulatory guidelines presented to the Board of County Commissioners February 2014.
6. County Map showing tower and airport locations

KEY POINTS

- This application is not an application for a "Wind Farm." The purpose of the application is to collect wind data over a period of several years.
- Per Section 12-319-4.31 of the Zoning Regulations for the Unincorporated Territory of Douglas County, *radio, television, telecommunication and microwave towers* are uses which may be approved as a Conditional Use.
- This use – meteorological tower - is not specifically listed in the Zoning Regulations but is considered by staff to be a similar use.
- This structure is temporary and does not include a fixed foundation and permanent land alterations.

- Douglas County Board of County Commissioners approved a resolution on 12/11/2013 to establish a moratorium on wind farms but amended their interpretation to allow the applications for data collection to proceed.

DESCRIPTION OF USE

Request is for the installation of a 196 foot structure (metrologic tower) to monitor and collect wind data over a period of 5–6 years. Collected data will be used by the applicant in the *"determination of this areas' possession of sufficient wind resources to support development of a wind energy center, sometimes referred to as a wind farm."*

This application is not for the development of a wind energy center (wind farm) or the placement of wind turbines. Such application will require a separate Conditional Use Permit with appropriate documentation and public notice. Also, this application is not intended for communication or cellular equipment. There is no expectation that communication equipment would be co-located on this structure in the future.

The structure is a monopole held in place by guy wires anchored at various distances from the structure for support. Data collection equipment (anemometer) is attached to the tower at intervals. Staff requested additional information about the equipment. The applicant's response was: "There are three pairs of anemometers placed at 30, 50, and 60 meters. The anemometers consist of three "cups" that rotate depending on wind speed and are approximately six inches across. Although the anemometers rotate, the rotation is contained within the approximately 6 inch diameter."



Closeup view of an anamometer

ASSOCIATED CASES/OTHER ACTION REQUIRED

- Board of County Commissioners’ approval of the Conditional Use.
- Zoning and Codes Office issuance of a Conditional Use Permit when plans have been released to the Zoning and Codes Office and conditions of approval have been met.

PUBLIC COMMENT

- Area property owners called asking for more detail regarding the location, use and intent of the proposed tower.

Site Summary: Subject Property: Proposed Buildings:	West 80 acres of a 307 acre parcel. None
GENERAL INFORMATION	
Current Zoning and Land Use:	A (County-Agricultural) District; 307-acre agricultural field with a rural residence along E 1100 Road.
Surrounding Zoning and Land Use:	A (County-Agricultural) District in all directions. Agricultural uses and rural residential homes.

I. ZONING AND USES OF PROPERTY NEARBY

This property is located in the southwest portion of Douglas County approximately two miles west of Highway 59 and one mile north of Highway 56. This property and the surrounding area is zoned A (Agricultural). This area is rural in nature and includes numerous residential homes located along the surrounding County roads.

Section 12-319-4.31(d)(5) recommends that towers be located in commercial, industrial or agricultural zoning districts. The subject property is zoned Agricultural.

Staff Finding – Nearby properties are zoned A (Agricultural) and contain a mix of rural residential and agricultural land uses. The proposed tower would be located in a recommended district.

II. CHARACTER OF THE AREA

This portion of southwest Douglas County is rural in nature. There are no urban growth boundaries that extend to this portion of Douglas County. The area includes large parcels of land used for agricultural purposes with numerous rural residential homes located along County roads.

Staff Finding – This area is rural in nature, with agricultural lands, and residential homes along County roads.

III. SUITABILITY OF SUBJECT PROPERTY FOR THE USES TO WHICH IT HAS BEEN RESTRICTED

Applicant’s response: *"The subject property is clear of physical obstructions that would interfere with access to wind resource and it possesses representative characteristics of the overall area."*

The current zoning designation for the property is A (Agricultural) District. A variety of agriculture-related uses are allowed in this district. The proposed request will not alter the underlying zoning district. Towers are allowed in the A (Agricultural) District with approval of a Conditional Use Permit. The A (Agricultural) District is a recommended base district for towers. This structure is temporary in nature and will be removed at the end of the study period.

Staff Finding – The property is suitable for agricultural uses. A Conditional Use Permit (CUP) does not change the underlying zoning; therefore, the suitability of the property for agricultural uses will not be altered.

IV. LENGTH OF TIME SUBJECT PROPERTY HAS REMAINED VACANT AS ZONED

This A (Agricultural) District zoning has been in place since 1966. The proposed tower will be located on a leased area in the west portion of the 307-acre site.

Staff Finding – The property has been zoned A (Agricultural) since the adoption of the zoning in 1966.

V. EXTENT TO WHICH REMOVAL OF RESTRICTIONS WILL DETRIMENTALLY AFFECT NEARBY PROPERTY

Applicant's Response: *"The tower is approximately 196' in height therefore will be visible from nearby properties from areas not obstructed by trees, buildings or other structures."*

Section 12-319-1.01 of the County Zoning Regulations recognize that *"....certain uses may be desirable when located in the community, but that these uses may be incompatible with other uses permitted in a district...when found to be in the interest of the public health, safety, morals and general welfare of the community may be permitted, except as otherwise specified in any district from which they are prohibited."*

This request is for a 196' guy-wired tower that will support meteorological data collecting equipment. Access to the site shall be limited to regular service and maintenance of the tower and associated equipment. This structure is temporary and does not include a foundation or other permanent changes. The structure will be visible across the property for land owners with an unobstructed view within this area. No detrimental effects are anticipated from the approval of This Conditional Use Permit for this structure for the purpose of data collection.

Staff Finding – Given the non-permanent nature of the structure there should be no detrimental effect on surrounding property.

VI. RELATIVE GAIN TO THE PUBLIC HEALTH, SAFETY AND WELFARE BY THE DESTRUCTION OF THE VALUE OF THE PETITIONER'S PROPERTY AS COMPARED TO THE HARDSHIP IMPOSED UPON THE INDIVIDUAL LANDOWNERS

Applicant's Response: *"This metrological tower will monitor and collect wind data (speed and direction) over a period of time which will help determine area feasibility for future wind development which would create jobs and economic development for the overall area."*

The purpose of this criterion is to compare the effect of denial of the request on the public health, safety and welfare to the effect on the individual landowner.

The purpose of this request is to collect additional information to determine feasibility of wind development as an accessible resource. Approval of this request does not convey any approval for a specific development of a wind energy facility. Information collected by the applicant will be for the applicant's benefit in the final determination of a future request.

The proposed structure is temporary in nature and should not impose a hardship on individual landowners. There is no office or manned facility associated with the structure.

Staff Finding – Approval of the request will facilitate the applicant’s assessment of wind energy as a developable resource in Douglas County. The structure is non-permanent and does not guarantee the approval of a future application for a “wind farm.” There is no substantial gain or loss to the public that result from the approval of this request.

VII. CONFORMANCE WITH THE COMPREHENSIVE PLAN

Applicant’s Response: *"This request is an initial step in considering future wind development in the area which would conform with the overall planning goals of economic diversity, compatibility and sustainability."*

The subject property is not located within an identified Urban Growth Area for any of the incorporated cities in Douglas County. There are several unincorporated communities and land divisions forming informal subdivisions in the surrounding area.

Chapter 16 of *Horizon 2020* addresses environmental policies applicable to Lawrence and Douglas County. The plan states that the recommendations are “intended to foster a healthy environment that contributes to a growing economy and a livable community.” The overall policy applicable to this development project states:

"We will strive to ensure the sustainability of our physical environment, both natural and built, the health of our economy and the efficient and effective functioning of our community" (Chapter 1, *Horizon 2020*).

Chapter 16 of *Horizon 2020* identifies the following resources and provides applicable policies:

Water Resources:	<i>Water shed protection, public water supply reservoirs, water quality, floodplain management and aquatic habitats.</i>
Land Resources:	<i>Rural woodlands, urban forests, native prairies, agricultural soils, slopes, and open spaces.</i>
Air Resources:	<i>Excess greenhouse gases, air quality, and indoor pollution.</i>
Resource Management:	<i>low cost raw materials, such as sand gravel, timber oil, gas, and stone</i>
Waste Management:	<i>Solid waste and hazardous waste to reduce, reuse and recycle materials produced in Douglas County.</i>

The Comprehensive Plan does not explicitly address wind energy resources. In practice wind energy is recognized by many as a “clean” or “green” energy resource. The County does not currently have any policies regarding this specific land use.

It should be clear that this application is for a Conditional Use Permit for the construction of a tower (structure) to support equipment for the purpose of data collection only. Any application for equipment related to a wind farm that is part of the energy collection facility would require a separate application. The tower structure has been evaluated by staff with respect to its land use impact similar to a communication tower. Communication towers are generally incorporated in Chapter 10 Communities Facilities of *Horizon 2020*.

Staff Finding – The comprehensive plan does not provide any specific land use recommendations regarding wind energy. A Conditional Use Permit can be used to allow specific non-residential uses subject to approval of a site plan. This tool allows proportional development in harmony with the surrounding area. The proposed request is consistent with the Comprehensive Plan.

STAFF REVIEW

Section 12-319-4.31 allows radio, television, telecommunication, and microwave towers in Douglas County subject to approval of a Conditional Use Permit when the structures are more than 100' tall. This section also provides guidelines and standards intended to be used during the review of towers related to communication equipment. This request is for a tower that will support specific data collection equipment and not cellular or radio communication equipment. Some provisions of the Code address co-location requirements which are not applicable to this request and would not be expected to be added to the structure if approved.

This tower structure has a comparable height to communication towers. It is a mono pole construction with guy wires to anchor the structure. A permanent foundation is not proposed with this application since the structure is temporary and will be removed at the conclusion of the data collection period. Land use concerns include adequate setback and proximity to other land uses.

Tower Removal

Communication towers require that if the equipment is removed and the tower is vacant for 3 years then the tower owner would be required to remove the structure. All towers are required to provide a sign on the structure or fence around the base of the tower identifying the tower owner/operator with a name and phone number. This application is requested for the purpose of data collection. Documents from the applicant indicate that the maximum time limit for use of the structure would be 6 years. A condition, if approved, setting a specific a time limit will ensure the removal of the structure. At a minimum, a sign should be added to the tower site providing contact information as required for similar structures towers.

Setback

The County Zoning Regulations require the tower to be setback a distance equal to the height of the tower from any property line except that the setback may be reduced if documentation from a registered engineer is submitted certifying the fall zone of the tower in event of a failure or collapse. The proposed structure complies with the setback requirements and is more than 200' from the nearest property line. The structure is designed to be tipped down for maintenance as needed.

Lighting

No lighting per FAA is required for this structure.

Airstrips

As a courtesy, staff has provided notice to owners of private airstrips in the vicinity. A map showing permitted airfields in the county is attached.

County Zoning Regulations – Wind Farms

County staff is currently preparing draft regulatory language to be considered as a set of general guidelines a future text amendment to specifically address "Wind Farms".

Conclusion

This request is for the construction of a tower for the exclusive use of data collection. Additional site plan notes are recommended to clarify the use and intent of this tower. Staff recommends approval of the Conditional Use Permit subject to conditions related to signage and a time limit for the use.

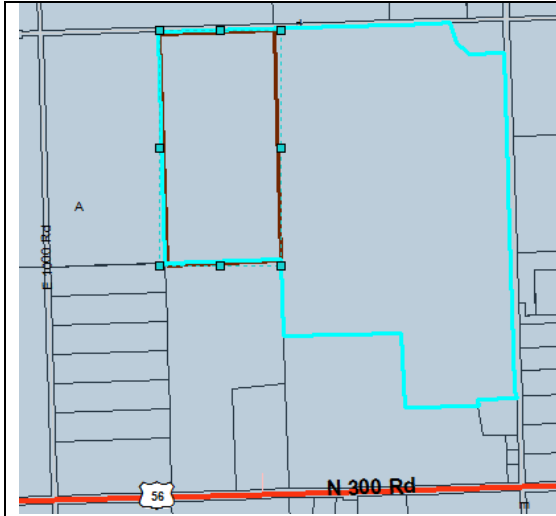


Figure 1. Zoning of Area

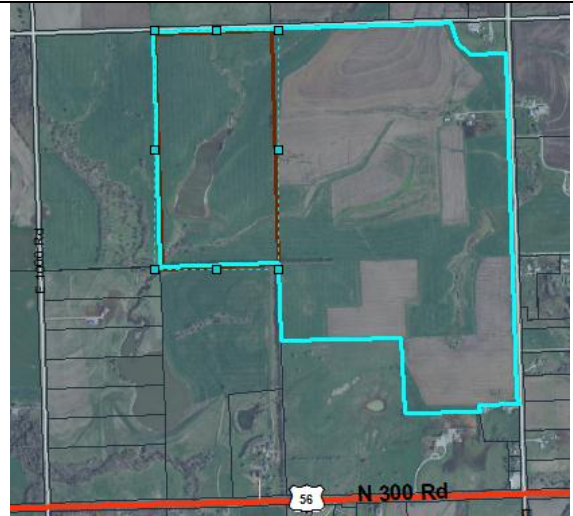
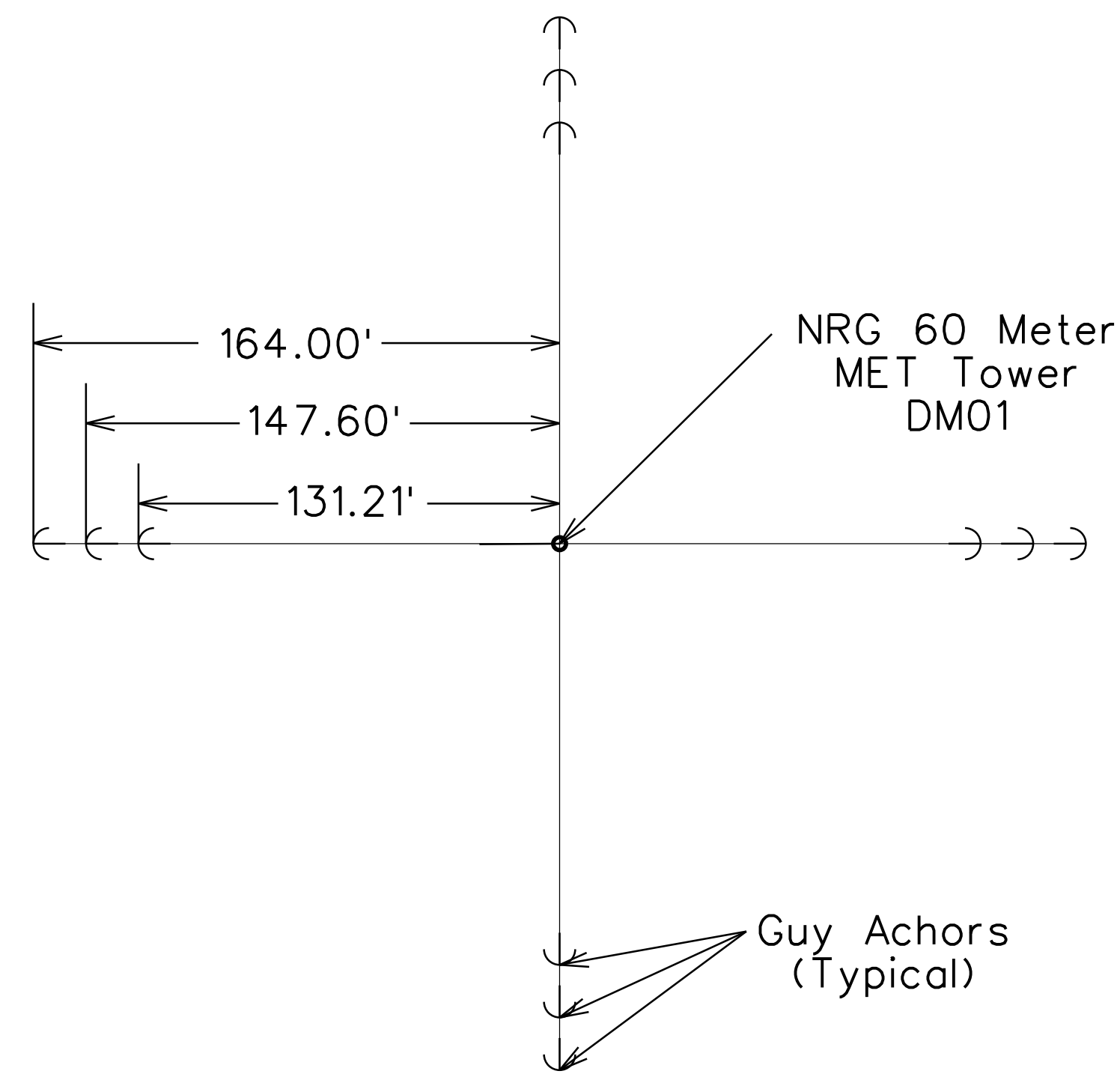


Figure 2. Land Use of Area

Nextera Energy - Pleasant Grove, KS

Site Plan for Proposed Meteorological Tower DM01 Sec 33-14-19, Douglas County, KS



MET Tower Detail
(No Scale)

Certificate of Report

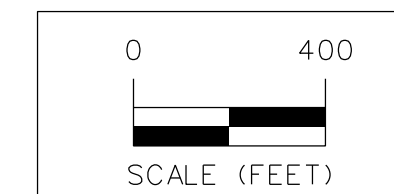
I, Mike Schulte, Kansas Land Surveyor #1548, do hereby certify that this site plan drawing was prepared under my direct personal supervision on November 6, 2014 for Section 33, Township 14 South, Range 19 East, of the 6th P.M., Douglas County Kansas.

Mike Schulte, L.S. # 1548
1751 Madison Ave.
Council bluffs, Iowa 51503
(712) 322-3202

Location Map

Location Map Legend

- Parcel Boundary
- 1/4 Section Line
- Existing Road Right-of-Way



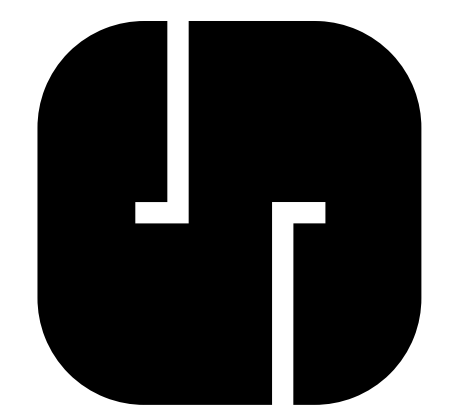
ISSUE DATE: 11-06-2013

NEXTERA ENERGY - PLEASANT GROVE, KS

Site Plan for Proposed Meteorological Tower DM01 Sec 33-14-19 DOUGLAS COUNTY, KANSAS

SNYDER & ASSOCIATES, INC.

1751 MADISON AVENUE
COUNCIL BLUFFS, IA 51503
712-322-3202 | www.snyder-associates.com



Project No: 1131062

Sheet 1 of 1

MARK	REVISION	DATE	BY
Engineer: JWK	Checked By: MGG	Scale: 1"= 400'	
Technician: DW	Date: 11-06-13	Field Bk:	Pg:
Project No: 1131062			Sheet 1 of 1

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 D:\113-1062-CADD-1131062 SITE PLAN.dgn

1. Please provide narrative regarding the purpose of the request. In this narrative please state that communication equipment is not proposed or allowed. This will help to clarify the use.

The purpose of the request is to install a meteorological tower which will monitor and collect wind data (speed, direction, etc.) over a period of time up to a maximum of 5 ½ years (according to the terms of the agreement). This data will be used to validate the applicant's previous desk top analysis of available wind data in order to determine if this area possesses a wind resource that will support development of a wind energy center.

The proposed tower is an NRG 60 meter XHD Tall-tower that is approximately 196 feet in height and has a tubular structure. The tower sits on a baseplate and therefore requires no foundation or outside utilities. Four sets of guy wire anchors are placed at **40m (131')**, **45m (147')**, and the outermost guy anchor at **50m (164')**. The tower is constructed on the ground and is tilted into its final position with a temporarily anchored winch.

The tower will be striped orange and white and will have orange marker balls placed on the guy wires to increase visibility, per FAA recommendations, however FAA approval is not required because the tower stands below the 200' threshold.

2. Please clarify the time line. Is this CUP requested for 5 years or 6 to accommodate the removal of the equipment per the lease.

The normal operating timeline for meteorological towers are approximately 2 years. However, based on the terms and conditions of the property owner's agreement, the maximum time the applicant is allowed to have the met tower in place is 5 ½ years (5 year term with up to 6 months to remove the tower).

3. Please clarify the location of equipment in relationship to the property line. Two graphics in your attachments suggest it may or may not be over a property line.

The met tower is located in the northwest corner of the parcel. Below is a list of distanced to the property line in each direction, starting with the closest proximity:

- Western property line: 205 feet
- Northern property line: 490 feet
- Southern property line: 2,160 feet
- Eastern property line: 3,765 feet

The met tower has no foundation, therefore requires four sets of anchored guy wires to support the structure, with the farthest guy wire anchor placed approximately 164 feet from the base of the tower, therefore the entire structure and associated support structures will be installed away from the property line and roads.

4. How often is the tower accessed for maintenance?

Normal maintenance is conducted once a year unless there is extraordinary reason to visit the site. Extraordinary reasons could include damage from extreme wind, lightning strike, or if the data uplink is interrupted over a period of time.

5. Do the attachments move or rotate?

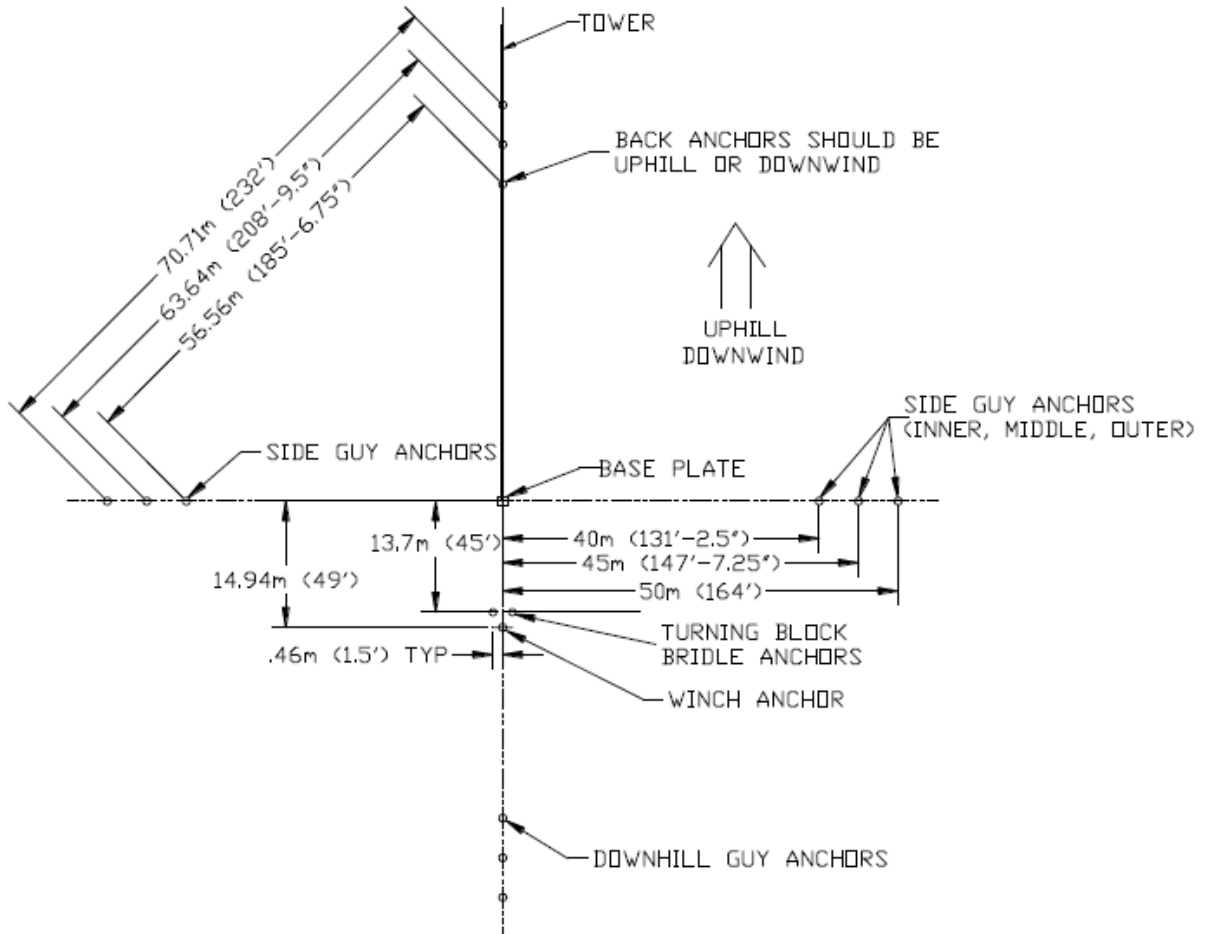
Below is a photo looking up at an installed meteorological tower. There are three pairs of anemometers placed at 30, 50, and 60 meters. The anemometers consist of three “cups” that rotate depending on wind speed and are approximately six inches across. Although the anemometers rotate, the rotation is contained within the approximately 6 inch diameter.



Closeup view of an anamometer

6. Please provide an elevation of the tower showing dimensions, height of equipment attached, any GPS units (that extend height), etc.

In addition to the first photo used to address the previous question, below is a cross section showing placement of guy wires and anchors. Neither the tower, nor any associated equipment will exceed the maximum height of 60m (approximately 196 feet).



We will prepare the landowner list and have it ready for submittal with the application Monday.

Temporary Meteorological Towers - 60 meter (196 ft) Tilt-Tube



Temporary Meteorological Towers

60 meter (196 ft) Tilt-Tube Met Tower

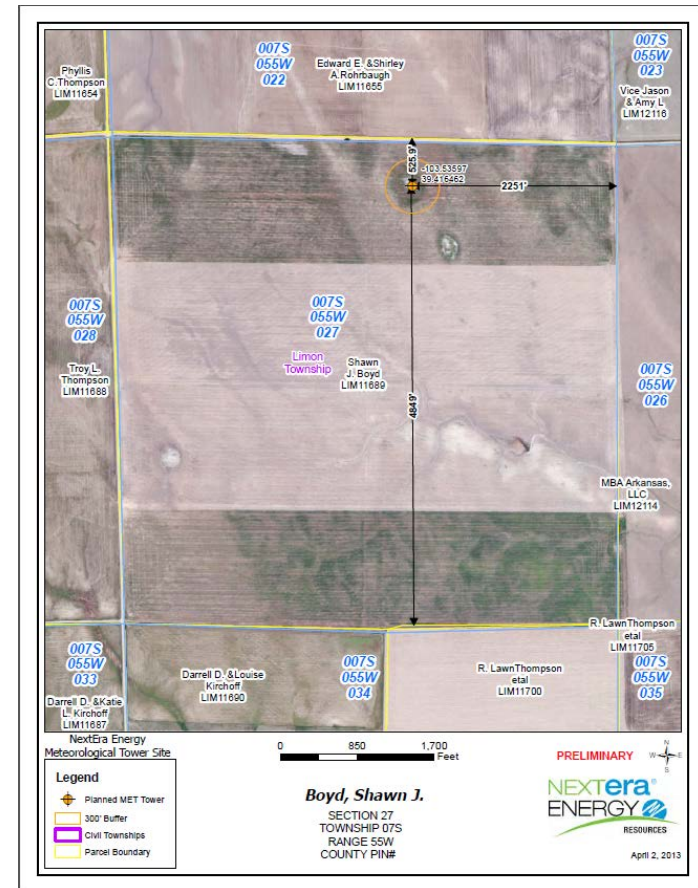
- Four (4) guy wires, oriented N-S-E-W
- Outermost guy anchor 164 feet from mast center
- Baseplate requires no foundation
- Tower tilt-down in direction away from logger (north)
- 196 feet impact zone when tower tilted down for maintenance.
- Accessible by truck with flatbed trailer (crop impact)

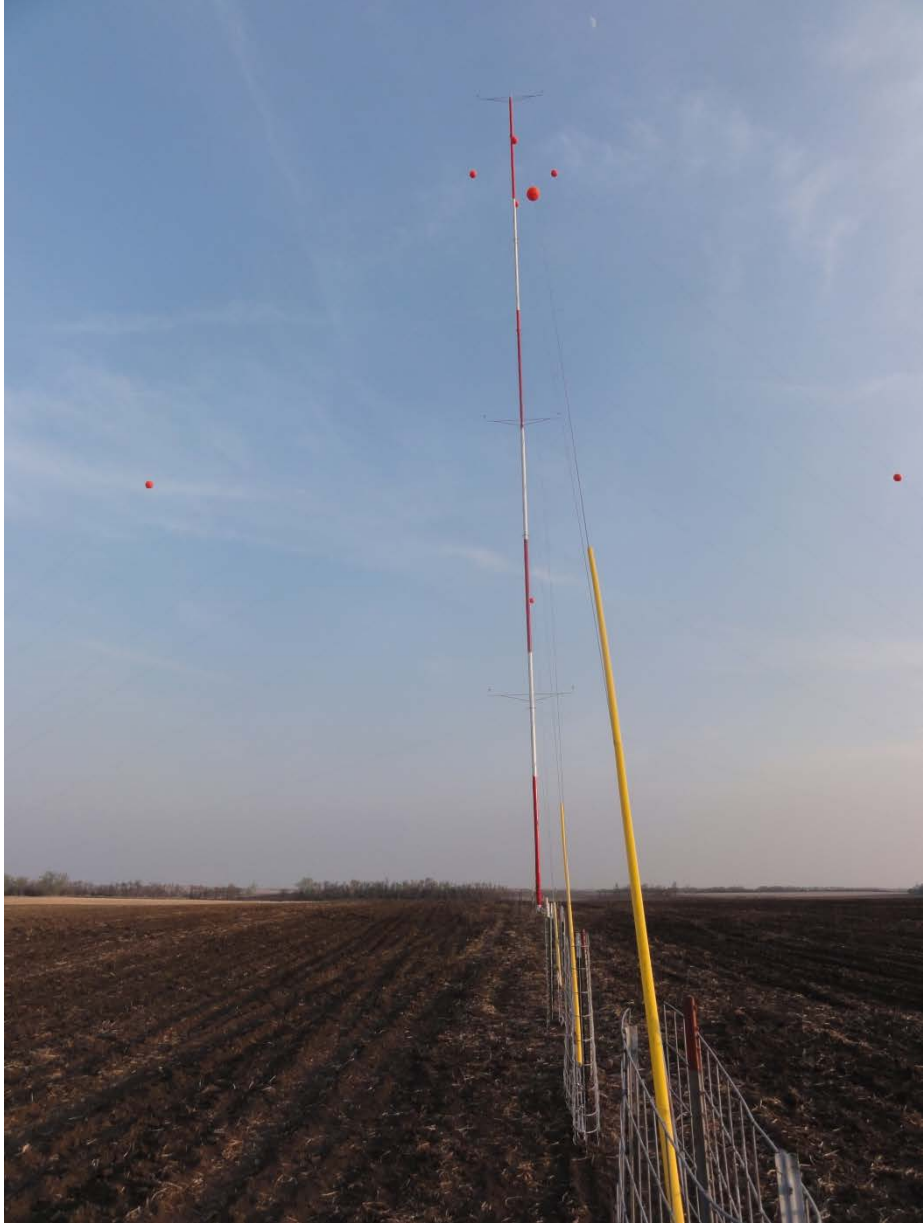
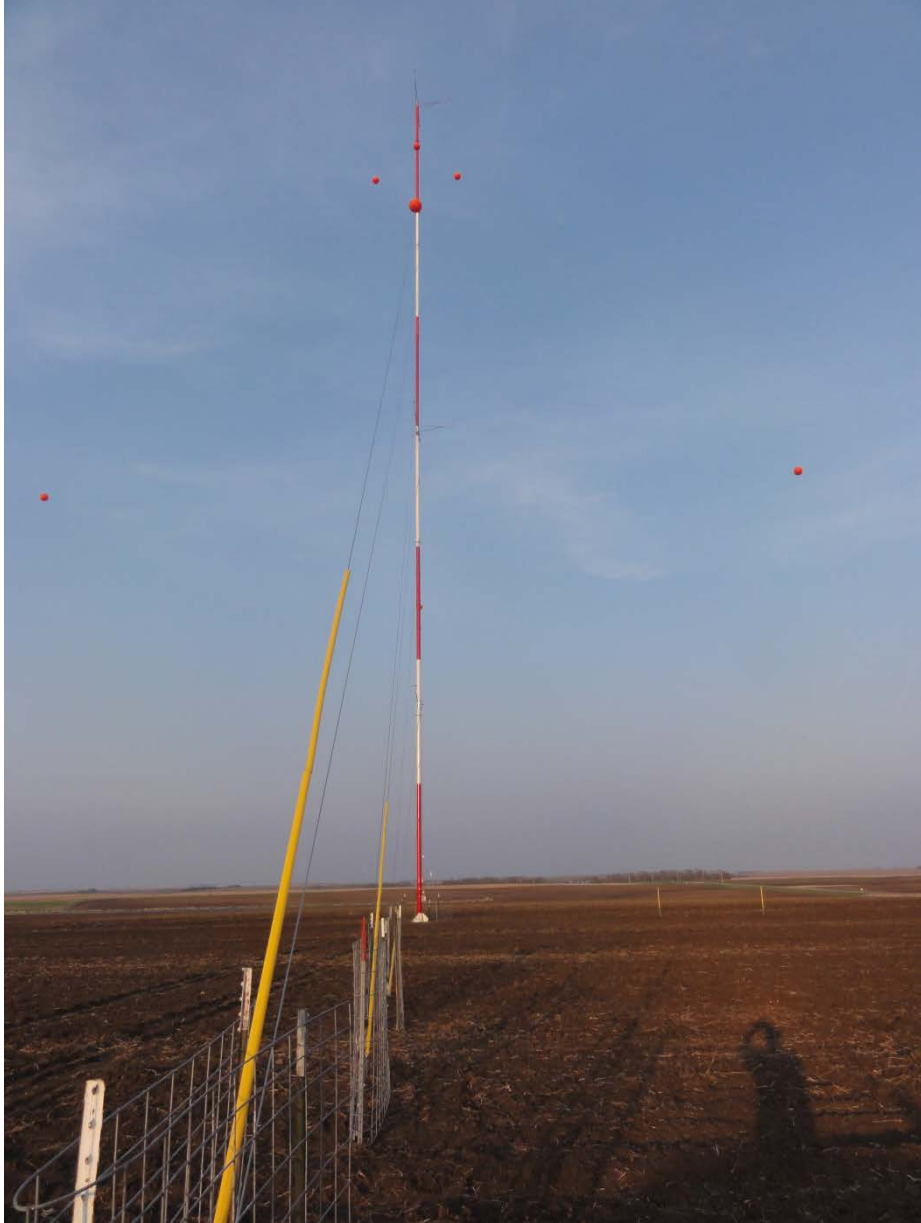


Temporary Meteorological Towers

60 meter (196 ft) Tilt-Tube Met Tower

- Landowner signature required on Met Exhibit B
- Understand crop impacts from install and on-going maintenance requiring tilt-down of the met tower
- Cannot guarantee regular weed control – more cost-effective to compensate landowner.
- Orange radius ring shows manufacturer recommended 300 foot setback

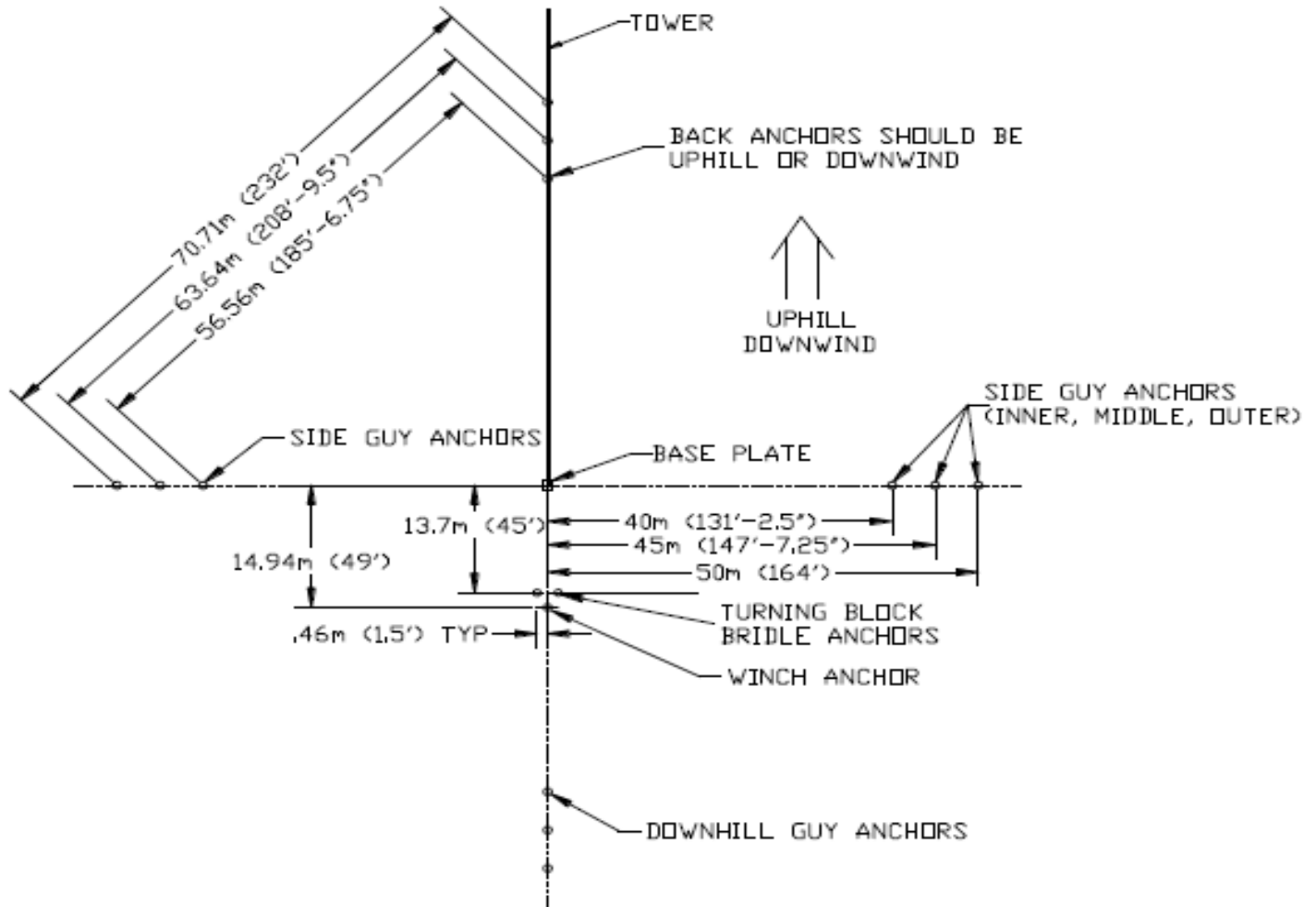




Winch/bridle anchors can be seen in photo (above left) – 45 feet from mast center, no guy wires, marked with t-posts and hi-visibility guy sleeves. Outermost-anchor – 164 feet from mast.

60m XHD with
Standard Footprint

Site Layout



HOME RULE RESOLUTION NO. 13-12-5

A HOME RULE RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS PLACING A TEMPORARY MORATORIUM ON LARGE WIND ENERGY CONVERSION SYSTEMS

WHEREAS, K.S.A. 19-101, *et seq.* provides the county commissions in the state of Kansas with home rule authority to transact all county business and perform all powers of local legislation and administration it deems appropriate.

WHEREAS, the Board of County Commissioners of Douglas County, Kansas (the "Board") has previously adopted and amended *Zoning Regulations for the Unincorporated Territory of Douglas County, Kansas*, as codified in Chapter 11, Article 3 of the Douglas County Code and as amended (the "Zoning Regulations").

WHEREAS, the Board is concerned that the Zoning Regulations, as currently written, may not adequately address adverse effects that wind farms located in the unincorporated areas of Douglas County may create.

WHEREAS, the Board adopts this Resolution and the moratorium set forth herein to provide time for the Board and applicable Douglas County officials, agencies, departments, boards, and commissions to review the Zoning Regulations, receive public input, hold public hearings, and make recommendations for amendments to the Zoning Regulations to address adverse effects that wind farms may create.

NOW, THEREFORE, THE BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS, SITTING IN REGULAR SESSION, DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. Definition. For purposes of this Resolution, the following phrases have the following definitions:

"Wind Energy Conversion System." The combination of mechanical and structural elements used to produce electricity by converting the kinetic energy of wind to electrical energy. Wind Energy Conversion systems consist of the tower, turbine apparatus and any buildings, roads, interconnect facilities, measurement devices, support structures and other related improvements necessary for the generation of electric power from wind.

"Large Wind Energy Conversion System." A Wind Energy Conversion System that has (i) any part of the tower or turbine apparatus exceeding 100 feet in height above ground level, or (ii) more than one tower or turbine apparatus of any size proposed and/or constructed by the same person or group of persons on the same or adjoining parcels or as a unified or single generating system.

SECTION 2. Temporary Moratorium. Commencing on the date of this Resolution and continuing through **April 30, 2014**, the repeal of this Resolution if earlier, or such later date to which the Board may subsequently extend this Resolution, the Board imposes a temporary moratorium on the planning, establishment, construction, application for or permitting of any Large Wind Energy Conversion System in the unincorporated areas of Douglas County. During the term of this moratorium, all Douglas County officials, agencies, departments and/or boards charged with the responsibility for receiving, reviewing, processing, and approving permits, site plans, applications and other requests relating to zoning, land use, and construction of a Large Wind Energy Conversion System are prohibited from doing so.

SECTION 3. Amendments to Zoning Regulations. During the term of this moratorium, the Douglas County Zoning & Codes Office, the Lawrence Douglas County Planning Office, and the Lawrence Douglas County Planning Commission are requested to undertake a review of the Zoning Regulations, receive public input, hold public hearings, and make recommendations to the Board for permanent changes to the Zoning Regulations that address adverse effects that wind farms may create in Douglas County.

SECTION 4. Effective Date. This Resolution is effective from and after its adoption and publication one time in the official County newspaper.

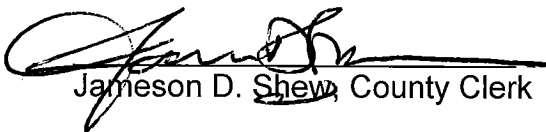
ADOPTED December 11, 2013.

BOARD OF COUNTY COMMISSIONERS
OF DOUGLAS COUNTY, KANSAS

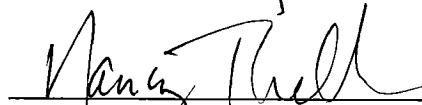


Mike Gaughan, Chairman

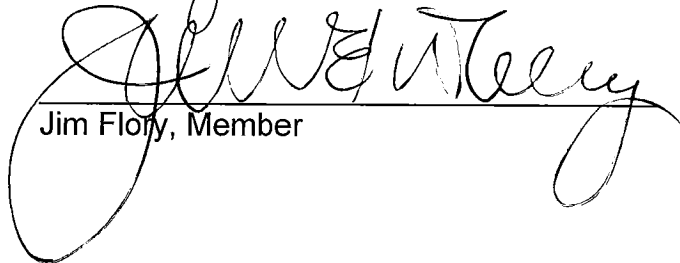
ATTEST:



Jameson D. Shew, County Clerk

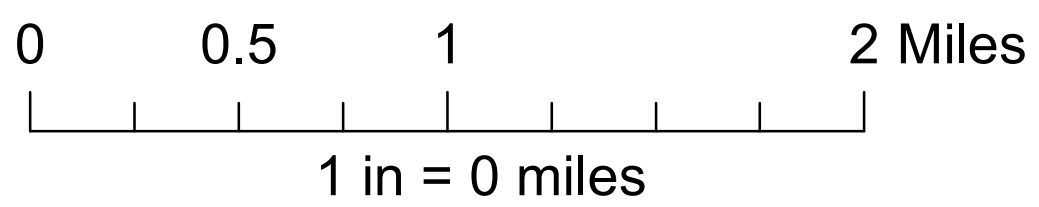
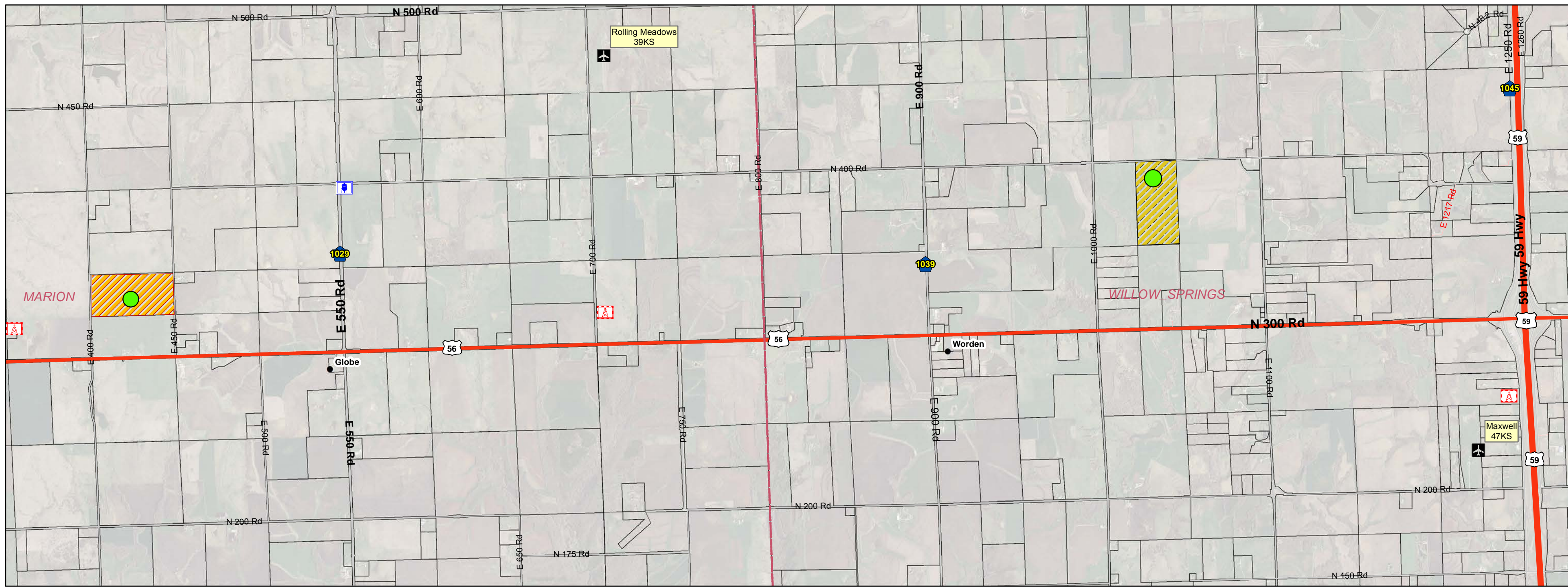


Nancy Thellman, Member



Jim Flory, Member

Met Tower Applications



Legend

Towers

TYPE

- COMMUNICATION
- TV
- WATER

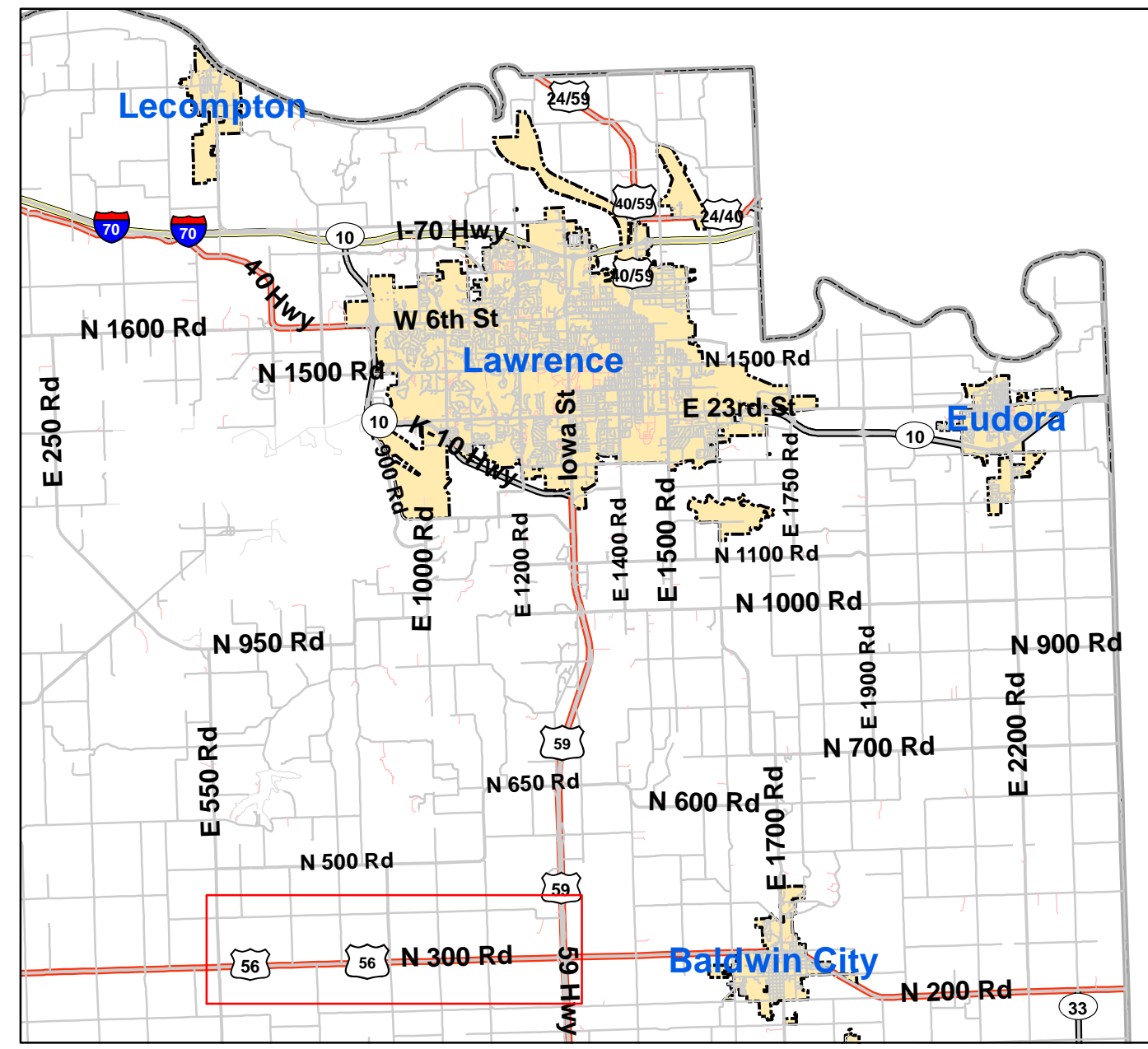
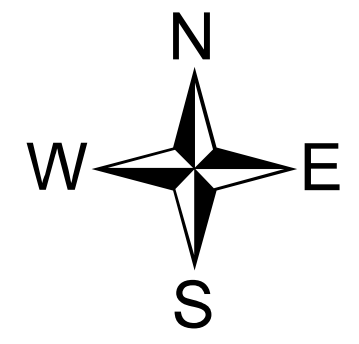
County Airports / Helipads

Entity

- Private
- Public
- City Limits - Douglas County
- township
- County Limits
- Water Bodies
- Townsites

APPLICATIONS

- CUP- 13-00480; N 400 RD & E 1000 RD
- CUP- 14-00002; E 400 RD & N 300 RD



LIST OF POSSIBLE “KEY ISSUES” RELATED TO DEVELOPMENT OF COMMERCIAL WIND ENERGY CONSERVATION SYSTEMS

- *Land Use*
- *Visual Impact*
- *Noise*
- *Bird migration/strikes*
- *Endangered Species*
- *Wildlife Habitat/Fauna*
- *Soil Erosion*
- *Water Quality*
- *Public Health and Safety*
- *Infrastructure*
- *Aviation/FAA*
- *Reception Interference*
- *Cultural Heritage*
- *Native Vegetation/Flora*
- *Cumulative Impact*
- *Company experience, reputation, and financial ability*
- *Removal (Decommission)/Reclamation Plans*
- *Bond agreement*

POTENTIAL GUIDELINES FOR DEVELOPMENT OF WIND ENERGY PROJECT REGULATIONS

SAFETY AND SETBACKS

Typical regulations include:

- *Setbacks from public rights-of-way*
- *Setbacks from residential structures (on adjacent properties)*
- *Setbacks from other structures*
- *Burial of power lines*
- *Regulation of potential life safety and property hazards*

EXAMPLES OF REGULATORY STANDARDS:

- *Distance from public road: 500 feet or height of turbine plus 50 feet, whichever is greater*
- *Distance from property line of any property not included in CUP: 500 feet or height of turbine plus 50 feet, whichever is greater*
- *Distance from residential structure: 1000 feet*
- *Distance from common agricultural accessory structure: height of turbine plus 50 feet*
- *Alternative setback system: multiply setback number by wind turbine height to the property line, public road, or nearest point on the foundation of an occupied building. Setback numbers ranging from 1.1 to 2.5, depending on size of turbine, size of system, and type of adjoining feature*
- *Reserve authority to impose additional or differing set back requirements on a case-by-case basis*
- *Will regulations allow adjoining owner to waive setback requirements? Will setback requirements be waived for adjacent properties that have turbines or are part of the project?*
- *Special setbacks for schools, hospitals*
- *Lowest point of rotor blades at least 100 feet above ground level at base of tower*
- *Maximum height restrictions (e.g., 355 feet)*
- *Structural engineer: inspection of foundation, structural assembly, mechanical and electrical systems*
- *Fire safety issues: risks associated with prescribed and non-prescribed (natural or accidental) burning*
- *Extraordinary events: Turbine failure; thrown/broken blade or hub; collector/feeder line failure; injured worker or citizen; kills of threatened or endangered species; discovery of an unexpectedly large number of dead birds of any variety on site; ice throw*
- *If lubricants or hazardous materials are used on or transported to site, said materials shall be kept and transported in accordance with state and federal regulations*
- *Manufacturers' Materials Safety Data Sheets must be provided for all materials used*
- *Automatic braking, governing or feathering system to prevent uncontrolled rotation or overspeeding*
- *Lightning protection*
- *Site security, prevention of unauthorized access, warning signs, fencing*
- *Require design in accordance with "proven good engineering practices" including: at least 3 blades; upwind rotor; no furling; tapered and twisted blades; and a well-designed braking system*

POTENTIAL GUIDELINES FOR DEVELOPMENT OF WIND ENERGY PROJECT REGULATIONS

USE COMPATIBILITY

Typical regulations include:

- *Site specific minimum requirements (see Safety & Setbacks)*
- *Evaluation of individual compatibility issues*
- *Permitted by-right in any district (individual use based on max. height & standards)*
- *Conditional Use Permit (commercial wind energy project)*

EXAMPLES OF REGULATORY STANDARDS:

- *Commercial wind system not allowed in specified districts or areas (e.g., floodplain, wetlands, residential, industrial)*
- *Different rules and regulations for small, home wind energy conversion systems (e.g., by-right regulations for 1-2 small turbine(s) for generation of power to be used on site and not distributed to grid); subject to established design and construction standards [no conditional use permit required]*
- *Examination of site and feasible alternative locations and reason for selected location*
- *Limits or constraints on current or future development as a result of siting the turbines and overall project*
- *Evaluate and mitigate impacts on agricultural, residential, industrial, tourism, recreational and commercial activities*
- *Evaluate and mitigate electromagnetic interference*
- *Must operate in conformance with FCC regulations*
- *Identify any public health and safety risks and how to eliminate or mitigate them*
- *Documentation/agreements between participating landowners and applicant*
- *Wind Energy Overlay Zone*
- *Possible exemption from regulation for small-scale, residential or agricultural use projects with generating capacity under 25 or 50 kilowatts*
- *Consideration and mitigation of impacts on state or federal resource lands or other protected areas on or near the proposed site*
- *Proximity to public or private airports or airstrips*
- *Consideration of Comprehensive Plan*

POTENTIAL GUIDELINES FOR DEVELOPMENT OF WIND ENERGY PROJECT REGULATIONS

SOUND AND LIGHT MANAGEMENT

Typical regulations include:

- *Minimum separation from nearby residential or public structures (i.e. churches or public assembly areas)*
- *Minimum/Maximum thresholds for acoustic levels*
- *Mitigation through sound reduction technology*

EXAMPLES OF REGULATORY STANDARDS:

- *No artificial lighting of equipment or project site, except as required by FAA*
- *No lights on towers other than those required by the FAA (but not applicable to infrared heating devices used to protect wind monitoring equipment)*
- *All lighting must be shielded to reduce glare and visibility from the ground*
- *Specific decibel levels (“A” or “C” weighted); pure tone noise considered; regulation of sound pressure levels (dB); cannot exceed established levels more than 3 minutes in any hour of any day*
- *Shadow flicker at occupied building on adjacent property is prohibited entirely or limited to 30 hours per year*
- *Ability for adjacent owners to waive shadow flicker and noise mitigation requirements.*

POTENTIAL GUIDELINES FOR DEVELOPMENT OF WIND ENERGY PROJECT REGULATIONS

NATURAL, HISTORICAL AND BIOLOGICAL RESOURCES

Typical regulations include:

- *Study of biological and environmental impacts*
- *Study of key wildlife habits: migration corridors, breeding & brooding areas, perching habits*
- *Evaluation of natural vegetation*
- *Cumulative impacts of siting on wildlife, cultural and other historically significant features*

EXAMPLES OF REGULATORY STANDARDS:

- *Evaluate and mitigate impacts on rare and disappearing ecosystems such as intact tallgrass, shortgrass or mixed grass prairies*
- *Evaluate and mitigate impacts on historical structures, landmarks, trails (such as California, Oregon, or Santa Fe Trails), and old town sites (Hesper, Palmyra, Prairie City, etc)*
- *Evaluate and mitigate impacts on livestock movement*
- *Evaluate and mitigate impacts on migratory bird patterns*
- *Locate development on already altered landscapes, such as extensively cultivated land and/or areas already disturbed*
- *Buffer zone of undeveloped land adjacent to intact landscapes*
- *Inventory of existing wildlife, endangered species, wetlands and other biologically sensitive areas within the site; flora, fauna and geoconservation; architectural reconnaissance survey; preservation of historic and cultural resources; site preparation; removal of vegetation, restoration of site following construction*
- *Selecting turbine locations to reduce likelihood of significant adverse impacts on wildlife*
- *Designing turbine towers to reduce horizontal surfaces for perching*
- *Designing turbine towers and pad-mounted transformers to avoid creation of artificial habitat or shelter for raptor prey; using gravel to prevent weeds for habitat for raptor prey*
- *Established standards for restoration of site following decommissioning of site*
- *Voluntary compliance with long-term habitat management agreements or conservation easements*

POTENTIAL GUIDELINES FOR DEVELOPMENT OF WIND ENERGY PROJECT REGULATIONS

AESTHETICS AND VISUAL IMPACTS

Typical regulations include:

- *Impacts on quality of landscape and viewsheds (for adjacent owners and/or of county significance)*
- *Limitations on internal road systems and grading (cut & fill work) needed to prepare wind farm site*
- *Limitations on size of internal conveyance systems for operation and maintenance to minimize long-term impacts on agricultural properties*
- *Use of natural vegetation for re-seeding disturbed areas*

EXAMPLES OF REGULATORY STANDARDS:

- *Structures must be self-supporting tubular towers painted a neutral color such as white or pale gray. No lattice structures allowed. No logos or advertisements. No company insignia, advertising or graphics on any part of the tower, hub or blades*
- *Owner or applicant shall take acceptable measures (such as planting trees, installing awnings, etc.) to mitigate adverse visual impacts such as reflections, shadow flicker, and blade glint.*
- *Project construction shall use wind energy systems of similar design, size, operation, and appearance throughout*
- *Project shall:*
 - *avoid state or federal scenic areas and significant visual resources*
 - *include in submittals: maps, models, photos and renderings showing the visual impact of the project from other locations; accurate visual representation of the project, including visual simulations and viewsheds analyses*
 - *provide consideration of impact on scenic byways and popular vistas, if any*
 - *minimize visual effect of ancillary structures, road, and fences to avoid visual clutter*
 - *Maintain visual unity among clusters of turbines*
 - *Maintain adequate spacing between turbines to avoid objectionable density*
- *Transformers and other electronic equipment should be hidden from view or otherwise constructed in harmony with surrounding landscape*
- *All turbines should have the same number of rotor blades and all blades should spin in the same direction*
- *No more than 12 machines per cluster (a "cluster" is a grouping of machines greater than 0.25 mile from another grouping)*

POTENTIAL GUIDELINES FOR DEVELOPMENT OF WIND ENERGY PROJECT REGULATIONS

ENVIRONMENTAL (SOIL EROSION, WATER QUALITY AND AIR QUALITY)

Typical regulations include:

- *Avoidance of sites with steep slopes*
- *Filing of SWEPP plans with state for soil erosion*
- *Limiting site construction to periods of dry soil conditions, frozen soil, or when native vegetation is dormant*
- *Limiting construction to areas outside regulatory floodplain and wetlands*

EXAMPLES OF REGULATORY STANDARDS:

- *Development of soil erosion, sediment control and storm runoff plan*
- *Erosion control measures for grading, construction and drainage of access roads and turbine pads, soil quality, downstream water quality, revegetation for slope stability, site restoration*
- *Removal and proper disposal of extracted materials*
- *Erosion protection of exposed soil*
- *Removal of stabilizing features (e.g., silt fences) when area is stabilized*
- *Maintenance of erosion control throughout life of project*
- *Removal of waste and scrap and proper disposal of it*
- *Mitigation of adverse impacts on surface and ground water*
- *Mitigation of dust*
- *Specific requirements for site clearance, soil compaction, protecting topsoil, tree removal, removal of hedgerows (shelter belts), silt fences and erosion controls*

POTENTIAL GUIDELINES FOR DEVELOPMENT OF WIND ENERGY PROJECT REGULATIONS

INFRASTRUCTURE – ROAD MAINTENANCE

Typical regulations include:

- *Evaluation and mitigation of impacts to roads, bridges and traffic due to construction and maintenance activities*

EXAMPLES OF REGULATORY STANDARDS:

- *Use of existing roads, wherever possible*
- *Execution of road agreement with Public Works for construction and maintenance activities, including damage to roads and bridges*
- *Submittal of a Traffic Impact Study (TIS) to evaluate and mitigate impacts on transportation routes that are coordinated with Public Works*
- *Applicant liable for damage to county/township roads or right of ways*
- *Applicant shall construct the smallest number of turbine access roads possible; access roads shall be low profile so farming equipment can cross them*
- *Measures taken to control dust on-site and off-site on transportation routes*

POTENTIAL GUIDELINES FOR DEVELOPMENT OF WIND ENERGY PROJECT REGULATIONS

PROJECT END PLANNING – DECOMMISSION AND RESTORATION PLANS

Typical regulations include:

- *Upon abandonment or end of project's useful life, applicant is responsible for decommissioning & removal of towers/other improvements and restoration of project site*

EXAMPLES OF REGULATORY STANDARDS:

- *Submittal of a decommissioning plan and approval by BOCC*
- *At the end of the project's useful life or upon abandonment, equipment shall be removed and foundations removed to depth of four (4) feet below ground surface. Access roads removed (except pre-project existing access roads). Property Owner may choose to have access roads left intact for internal circulation*
- *Restoration of soil, topography*
- *Applicant must demonstrate financial capability to carry out decommissioning and restoration requirements through:*
 - *Establishment of escrow account/surety bond/insurance policy/letter of credit for decommissioning and restoration plans*
 - *Standards for finding of abandonment and forced decommissioning*

POTENTIAL GUIDELINES FOR DEVELOPMENT OF WIND ENERGY PROJECT REGULATIONS

SOCIO-ECONOMIC AND LOCAL GOVERNMENT

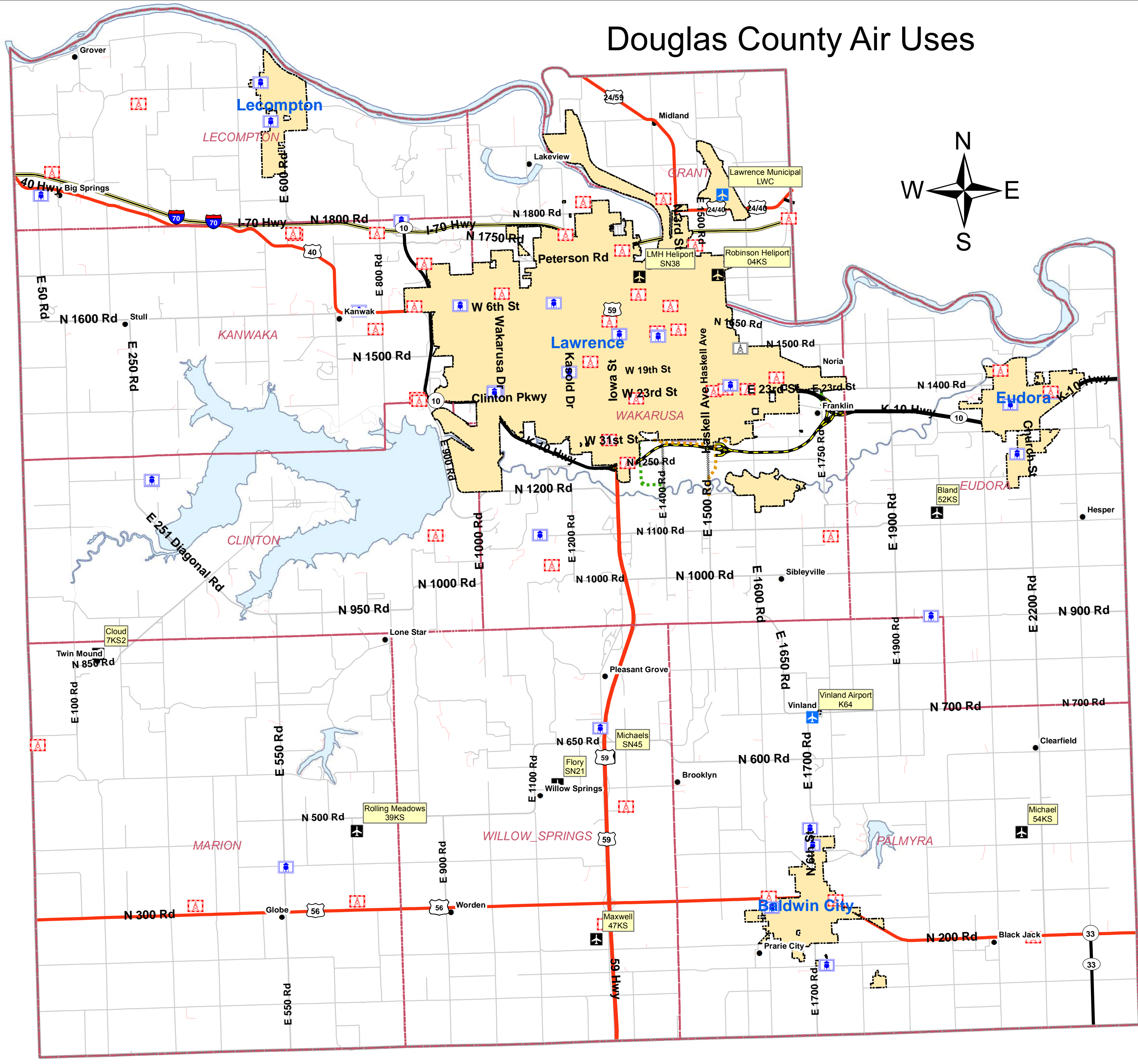
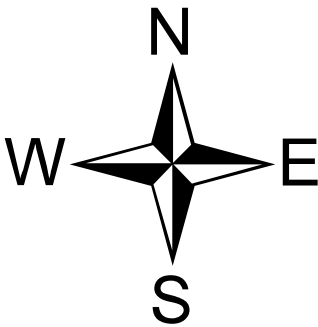
Typical regulations include:

- *Project shall be consistent with the public health, safety and welfare and not require expenditure of public funds*

EXAMPLES OF REGULATORY STANDARDS:

- *Conduction of wind site assessment prior to application*
- *Proposed total rated capacity*
- *Power Purchase Agreement in place prior to issuance of building permits and any on-site grading or construction*
- *If Power Purchase Agreement not obtained within 12-18 months of issuance of CUP, CUP is null and void*
- *Must conform to building code, pay required fees, submit to reasonable inspections*
- *Application requirements must be met, including: information about the applicant, including applicant's experience and financial ability to undertake and maintain operation of the project; insurance coverage; construction and phasing; site plans, including topography, streets and houses; schematic location of turbines and other equipment; identification of flood ways; construction documents; construction schedule; project life; on and off-site construction staging; traffic impact plans/studies; operation and maintenance requirements; and evaluation/discussion of all actual and potential harmful impacts of the project and elimination or mitigation of those impacts.*
- *County held harmless from any claims, costs, liabilities, damages or expenses on account of any damages claimed by any third party.*
- *Any transfer of ownership must be approved by County in advance, and transferee must meet requirements applicable to previously approved applicant/owner of CUP.*
- *Notification requirements and procedures for extraordinary events and hazards*
- *Submittal with application a complaint resolution process and approval of this process as part of CUP approval*
- *Combine transmission lines and points of connection to local distribution lines*
- *Connect the facility to existing substations or, if new substations are needed, minimize the number of new substations*
- *Submittal of Assessment of if/ how a project will affect community services, costs and infrastructure*
- *Submittal of future possible project expansions as part of initial CUP application*
- *Provision of a public interaction process for sharing of information and two-way communication*
- *Submittal of Assessment of tax revenues and infrastructure enhancements required*
- *Submittal of Assessment of business and job generation, economic benefits/burdens of project*

Douglas County Air Uses



Legend

Towers

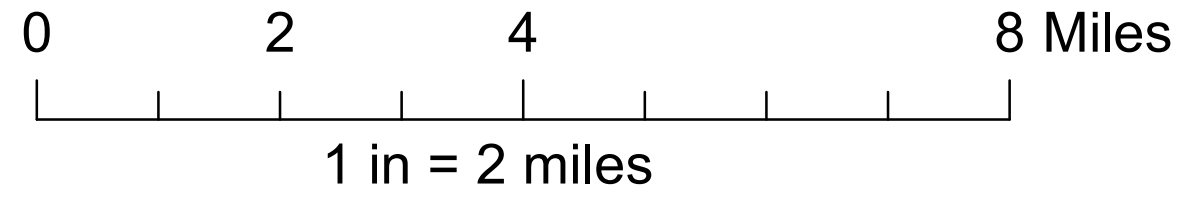
TYPE

- COMMUNICATION
- TV
- WATER

County Airports / Helipads

Entity

- Private
- Public
- City Limits - Douglas County
- township
- County Limits
- Water Bodies
- Townsites



ITEM NO. 3 CONDITIONAL USE PERMIT; METEOROLOGICAL TOWER; N 400 RD & E 1000 RD (SLD)

CUP-13-00480: Consider a Conditional Use Permit for a 60 meter (196') meteorological tower to monitor and collect wind data located east of the corner of N 400 Rd & E 1000 Rd and on the south side of N 400 Rd. Submitted by Tower Associates, for Donald & Jane Schwartz, property owners of record.

STAFF PRESENTATION

Ms. Sandra Day presented the item.

APPLICANT PRESENTATION

No applicant present.

PUBLIC HEARING

No public comment.

ACTION TAKEN

Motioned by Commissioner Liese, seconded by Commissioner Struckhoff, to approve the Conditional Use Permit for the meteorological tower and forwarding it to the County Commission subject to the following conditions:

- 1) Approval of the Conditional Use Permit shall be limited to 6 years from the date of the County Commission approval. Any extension of the time limit shall be allowed only per written request from the applicant and approval for extension by the County Commission following public notice.
- 2) The provision of a revised site plan that adds the following notes to the face of the drawing:
 - a) "A sign shall be posted on the tower or the exterior fence around the base of the tower with the name and telephone number of the tower owner/operator."
 - b) "Use of this tower shall be limited to meteorological equipment only and will not be allowed for use by telecommunication providers."
 - c) "This tower will be removed at the end of the Conditional Use Permit approval period."
 - d) "A change of ownership of the tower shall require a new Conditional Use Permit and public hearing at the Planning Commission." This will allow review of the intended use of the tower and public notice of the proposed change.

Unanimously approved 10-0.

PLANNING COMMISSION REPORT
Regular Agenda – Public Hearing Item

PC Staff Report
4/21/2014

**ITEM NO. 2: CONDITIONAL USE PERMIT; METEOROLOGICAL TOWER; BETWEEN E 400 RD
 & E 450 RD AND NORTH OF N 300 RD (SLD)**

CUP-14-00002: Consider a Conditional Use Permit for a 60 meter (196') meteorological tower to monitor and collect wind data located between E 400 and E 450 Roads and north of N 300 Road. Submitted by Tower Associates LLC on behalf of Charles and Doris Fawl, property owners of record.

STAFF RECOMMENDATION: Staff recommends approval of the Conditional Use Permit for the meteorological tower and forwarding it to the County Commission subject to the following conditions:

- 1) Approval of the Conditional Use Permit shall be limited to 6 years from the date of the County Commission approval. Any extension of the time limit shall be allowed only per written request from the applicant and approval for extension by the County Commission following public notice.
- 2) The provision of a revised site plan that adds the following notes to the face of the drawing:
 - a) *"A sign shall be posted on the tower or the exterior fence around the base of the tower with the name and telephone number of the tower owner/operator."*
 - b) *"Use of this tower shall be limited to meteorological equipment only and will not be allowed for use by telecommunication providers."*
 - c) *"This tower will be removed at the end of the Conditional Use Permit approval period."*
 - d) *"A change of ownership of the tower shall require a new Conditional Use Permit and public hearing by the Planning Commission."* This will allow review of the intended use of the tower and public notice of the proposed change.

Reason for Request: *"Tower Associates would like to install a meteorological tower to monitor and collect wind data over a period of time."*

Note: Much of the information in this staff report is duplicated from SUP-13-00480. Information related to the specific location of this tower is highlighted in bold purple for reference.

ATTACHMENTS

1. Site plan

KEY POINTS

- This application is not an application for a "Wind Farm." The purpose of the application is to collect wind data over a period of several years..
- **This application is related to SUP-13-00480 but for a separate property along the Highway 56 corridor.**
- Per Section 12-319-4.31 of the Zoning Regulations for the Unincorporated Territory of Douglas County, *radio, television, telecommunication and microwave towers* are uses which may be approved as a Conditional Use.
- This use – metrological tower - is not specifically listed in the Zoning Regulations but is considered by staff to be a similar use.
- This structure is temporary and does not include a fixed foundation and permanent land alterations.

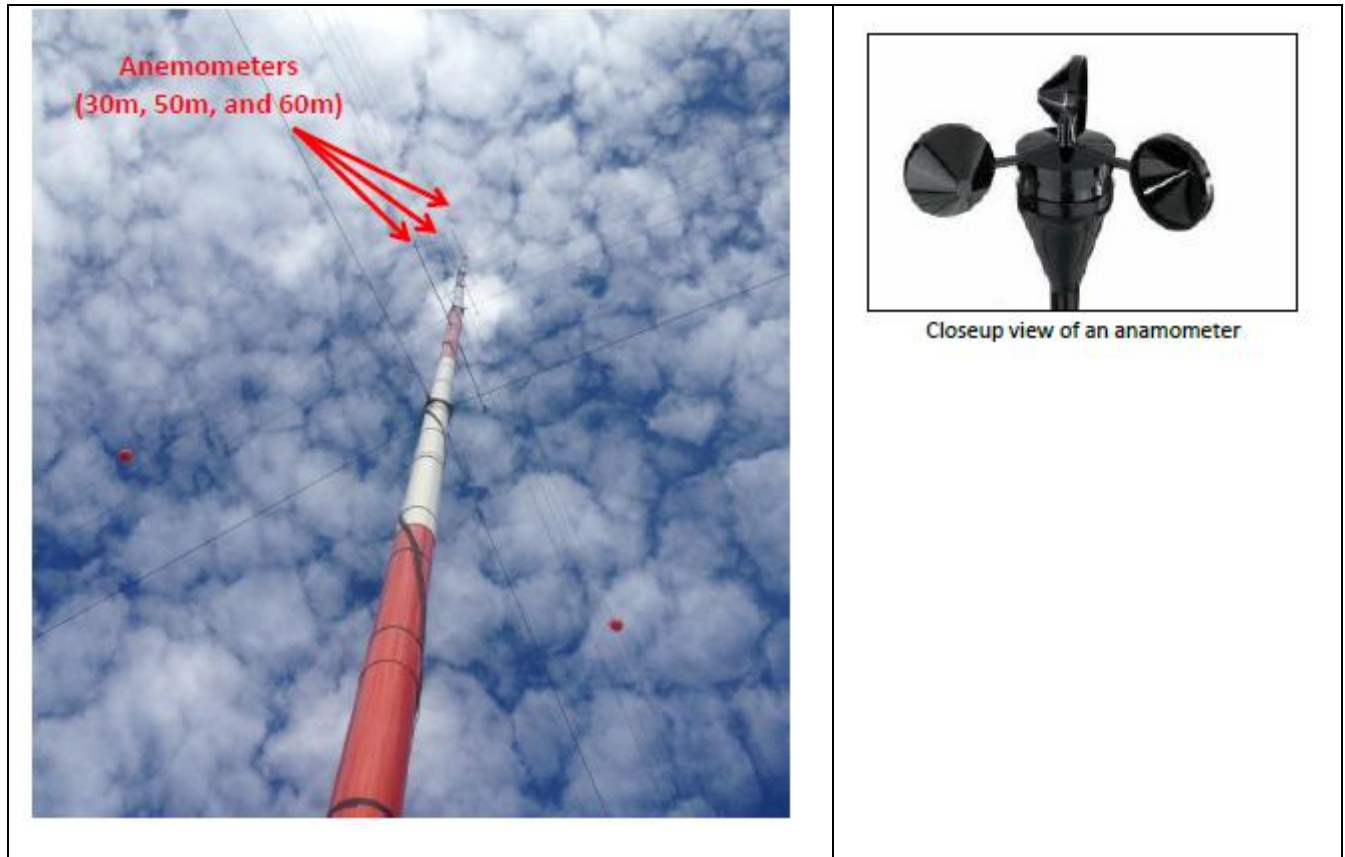
- Douglas County Board of County Commissioners approved a resolution on 12/11/2013 to establish a moratorium on wind farms but amended their interpretation to allow the applications for data collection to proceed.

DESCRIPTION OF USE

Request is for the installation of a 196 foot structure (metrologic tower) to monitor and collect wind data over a period of 5–6 years. Collected data will be used by the applicant in the *"determination of this areas' possession of sufficient wind resources to support development of a wind energy center, sometimes referred to as a wind farm."*

This application is not for the development of a wind energy center (wind farm) or the placement of wind turbines. Such application will require a separate Conditional Use Permit with appropriate documentation and public notice. Also, this application is not intended for communication or cellular equipment. There is no expectation that communication equipment would be co-located on this structure in the future.

The structure is a monopole held in place by guy wires anchored at various distances from the structure for support. Data collection equipment (anemometer) is attached to the tower at intervals. Staff requested additional information about the equipment. The applicant's response was: "There are three pairs of anemometers placed at 30, 50, and 60 meters. The anemometers consist of three "cups" that rotate depending on wind speed and are approximately six inches across. Although the anemometers rotate, the rotation is contained within the approximately 6 inch diameter."



ASSOCIATED CASES/OTHER ACTION REQUIRED

- Board of County Commissioners' approval of the Conditional Use.

- Zoning and Codes Office issuance of a Conditional Use Permit when plans have been released to the Zoning and Codes Office and conditions of approval have been met.

PUBLIC COMMENT

- Area property owners called asking for more detail regarding the location, use and intent of the proposed tower.

Site Summary: Subject Property: Proposed Buildings:	80 acre parcel None
GENERAL INFORMATION	
Current Zoning and Land Use:	A (County-Agricultural) District; 80-acre agricultural field.
Surrounding Zoning and Land Use:	A (County-Agricultural) District in all directions. Agricultural uses and rural residential homes.

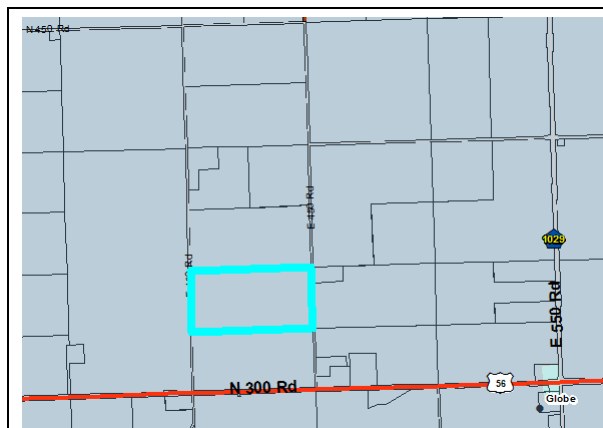


Figure 1. Zoning of Area



Figure 2. Land Use of Area

I. ZONING AND USES OF PROPERTY NEARBY

This property is located in the southwest portion of Douglas County approximately **four miles east of the west Douglas County Boundary and 5 ½ miles west of the tower proposed per application CUP-13-00480**. This property and the surrounding area is zoned A (Agricultural). This area is rural in nature and includes numerous residential homes located along the surrounding County roads.

Section 12-319-4.31(d)(5) recommends that towers be located in commercial, industrial or agricultural zoning districts. The subject property is zoned Agricultural.

Staff Finding – Nearby properties are zoned A (Agricultural) and contain a mix of rural residential and agricultural land uses. The proposed tower would be located in a recommended district.

II. CHARACTER OF THE AREA

This portion of southwest Douglas County is rural in nature. There are no urban growth boundaries that extend to this portion of Douglas County. The area includes large parcels of land used for agricultural purposes with **scattered** rural residential homes located along County roads. **This portion of Douglas County is slightly less populated than the area closer to Highway 59 to the east.**

Staff Finding – This area is rural in nature, with agricultural lands, and residential homes along County roads.

III. SUITABILITY OF SUBJECT PROPERTY FOR THE USES TO WHICH IT HAS BEEN RESTRICTED

Applicant's response: *"The subject property is clear of physical obstructions that would interfere with access to wind resource and it possesses representative characteristics of the overall area."*

The current zoning designation for the property is A (Agricultural) District. A variety of agriculture-related uses are allowed in this district. The proposed request will not alter the underlying zoning district. Towers are allowed in the A (Agricultural) District with approval of a Conditional Use Permit. The A (Agricultural) District is a recommended base district for towers. This structure is temporary in nature and will be removed at the end of the study period.

Staff Finding – The property is suitable for agricultural uses. A Conditional Use Permit (CUP) does not change the underlying zoning; therefore, the suitability of the property for agricultural uses will not be altered.

IV. LENGTH OF TIME SUBJECT PROPERTY HAS REMAINED VACANT AS ZONED

This A (Agricultural) District zoning has been in place since 1966.

Staff Finding – The property has been zoned A (Agricultural) since the adoption of the zoning in 1966.

V. EXTENT TO WHICH REMOVAL OF RESTRICTIONS WILL DETRIMENTALLY AFFECT NEARBY PROPERTY

Applicant's Response: *"The tower is approximately 196' in height therefore will be visible from nearby properties from areas not obstructed by trees, buildings or other structures."*

Section 12-319-1.01 of the County Zoning Regulations recognize that *"....certain uses may be desirable when located in the community, but that these uses may be incompatible with other uses permitted in a district...when found to be in the interest of the public health, safety, morals and general welfare of the community may be permitted, except as otherwise specified in any district from which they are prohibited."*

This request is for a 196' guy-wired tower that will support data collecting equipment. Access to the site shall be limited to regular service and maintenance of the tower and associated equipment. This structure is temporary and does not include a foundation or other permanent changes. The structure will be visible across the property for land owners with an unobstructed view within this area. No detrimental effects are anticipated from the approval of This Conditional Use Permit for this structure for the purpose of data collection.

Staff Finding – Given the non-permanent nature of the structure there should be no detrimental effect on surrounding property.

VI. RELATIVE GAIN TO THE PUBLIC HEALTH, SAFETY AND WELFARE BY THE DESTRUCTION OF THE VALUE OF THE PETITIONER'S PROPERTY AS COMPARED TO THE HARDSHIP IMPOSED UPON THE INDIVIDUAL LANDOWNERS

Applicant's Response: *"This metrological tower will monitor and collect wind data (speed and direction) over a period of time which will help determine area feasibility for future wind development which would create jobs and economic development for the overall area."*

The purpose of this criterion is to compare the effect of denial of the request on the public health, safety and welfare to the effect on the individual landowner.

The purpose of this request is to collect additional information to determine feasibility of wind development as an accessible resource. Approval of this request does not convey any approval for a specific development of a wind energy facility. Information collected by the applicant will be for the applicant's benefit in the final determination of a future request.

The proposed structure is temporary in nature and should not impose a hardship on individual landowners. There is no office or manned facility associated with the structure.

Staff Finding – Approval of the request will facilitate the applicant's assessment of wind energy as a developable resource in Douglas County. The structure is non-permanent and does not guarantee the approval of a future application for a "wind farm." There is no substantial gain or loss to the public that result from the approval of this request.

VII. CONFORMANCE WITH THE COMPREHENSIVE PLAN

Applicant's Response: *"This request is an initial step in considering future wind development in the area which would conform with the overall planning goals of economic diversity, compatibility and sustainability."*

The subject property is not located within an identified Urban Growth Area for any of the incorporated cities in Douglas County. There are several unincorporated communities and land divisions forming informal subdivisions in the surrounding area.

Chapter 16 of *Horizon 2020* addresses environmental policies applicable to Lawrence and Douglas County. The plan states that the recommendations are "intended to foster a healthy environment that contributes to a growing economy and a livable community." The overall policy applicable to this development project states:

"We will strive to ensure the sustainability of our physical environment, both natural and built, the health of our economy and the efficient and effective functioning of our community" (Chapter 1, *Horizon 2020*).

Chapter 16 of *Horizon 2020* identifies the following resources and provides applicable policies:

<i>Water Resources:</i>	<i>Water shed protection, public water supply reservoirs, water quality, floodplain management and aquatic habitats.</i>
<i>Land Resources:</i>	<i>Rural woodlands, urban forests, native prairies, agricultural soils, slopes, and open spaces.</i>
<i>Air Resources:</i>	<i>Excess greenhouse gases, air quality, and indoor pollution.</i>
<i>Resource Management:</i>	<i>low cost raw materials, such as sand gravel, timber oil, gas, and stone</i>
<i>Waste Management:</i>	<i>Solid waste and hazardous waste to reduce reuse and recycle materials produced in Douglas County.</i>

The Comprehensive Plan does not explicitly address wind energy resources. In practice wind energy is recognized by many as a “clean” or “green” energy resource. The County does not currently have any policies regarding this specific land use.

It should be clear that this application is for a Conditional Use Permit for the construction of a tower (structure) to support equipment for the purpose of data collection only. Any application for equipment related to a wind farm that is part of an energy collection facility would require a separate application. The tower structure has been evaluated by staff with respect to its land use impact similar to a communication tower. Communication towers are generally incorporated in Chapter 10 Communities Facilities *of Horizon 2020*.

Staff Finding – The comprehensive plan does not provide any specific land use recommendations regarding wind energy. A Conditional Use Permit can be used to allow specific non-residential uses subject to approval of a site plan. This tool allows proportional development in harmony with the surrounding area. The proposed request is consistent with the Comprehensive Plan.

STAFF REVIEW

Section 12-319-4.31 allows radio, television, telecommunication, and microwave towers in Douglas County subject to approval of a Conditional Use Permit when the structures are more than 100’ tall. This section also provides guidelines and standards intended to be used during the review of towers related to communication equipment. This request is for a tower that will support specific data collection equipment and not cellular or radio communication equipment. Some provisions of the Code address co-location requirements which are not applicable to this request and would not be expected to be added to the structure if approved.

This tower structure has a comparable height to communication towers. It is a mono pole construction with guy wires to anchor the structure. A permanent foundation is not proposed with this application since the structure is temporary and will be removed at the conclusion of the data collection period. Land use concerns include adequate setback and proximity to other land uses.

Tower Removal

Communication towers require that if the equipment is removed and the tower is vacant for 3 years then the tower owner would be required to remove the structure. All towers are required to provide a sign on the structure or fence around the base of the tower identifying the tower owner/operator with a name and phone number. This application is requested for the purpose of data collection. Documents from the applicant indicate that the maximum time limit for use of the structure would be 6 years. A condition, if approved, setting a specific a time limit will ensure the removal of the structure. At a minimum, a sign should be added to the tower site providing contact information as required for similar structures towers.

Setback

The County Zoning Regulations require the tower to be setback a distance equal to the height of the tower from any property line except that the setback may be reduced if documentation from a registered engineer is submitted certifying the fall zone of the tower in event of a failure or collapse. The proposed structure complies with the setback requirements and is more than 500’ from the nearest property line. The structure is designed to be tipped down for maintenance as needed.

Lighting

No lighting per FAA is required for this structure.

Airstrips

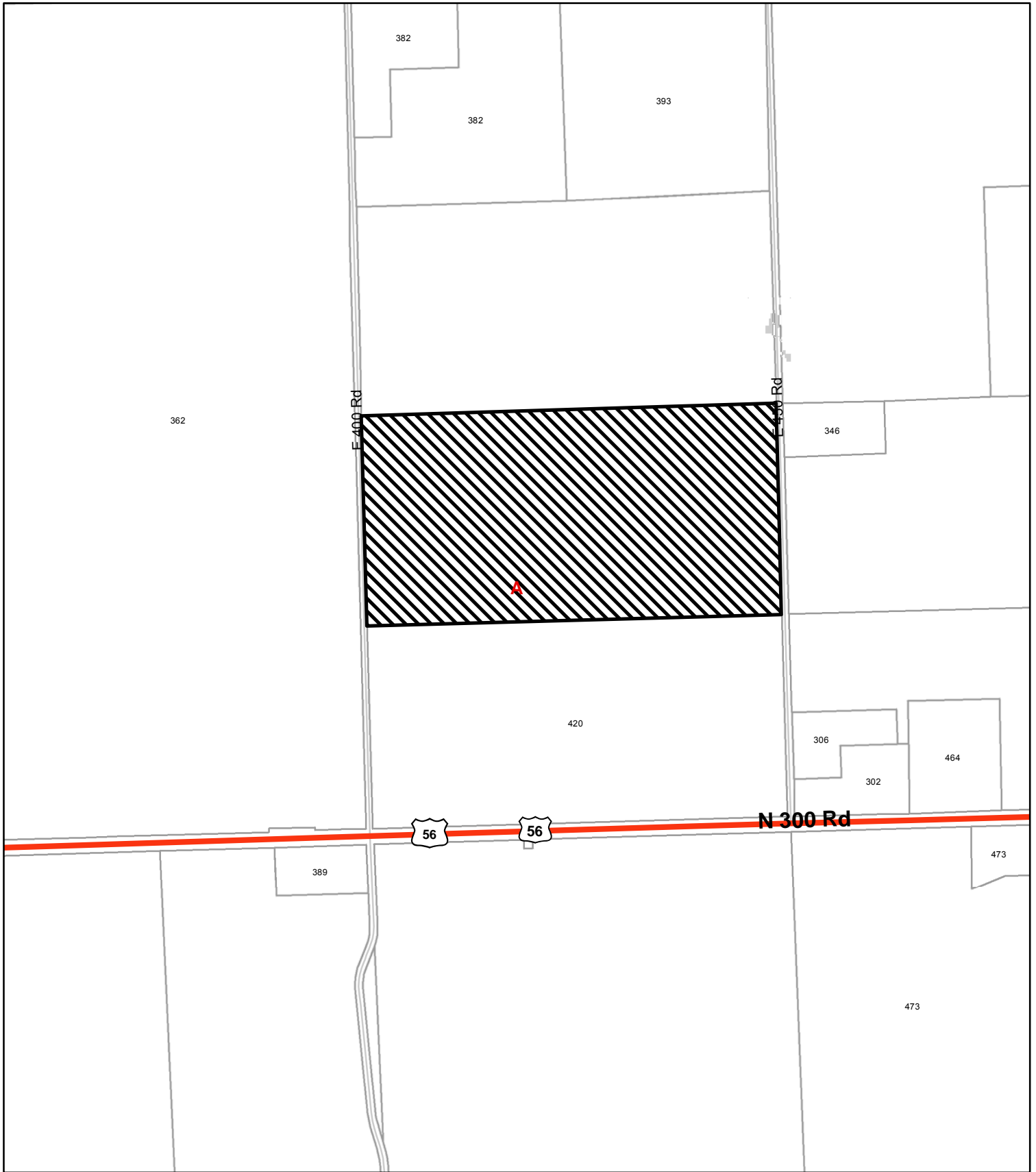
As a courtesy, staff has provided notice to owners of private airstrips in the vicinity. A map showing permitted airfields in the county is attached.

County Zoning Regulations – Wind Farms

County staff is currently preparing draft regulatory language to be considered as a set of general guidelines a future text amendment to specifically address “Wind Farms”.

Conclusion

This request is for the construction of a tower for the exclusive use of data collection. Additional site plan notes are recommended to clarify the use and intent of this tower. Staff recommends approval of the Conditional Use Permit subject to conditions related to signage and a time limit for the use.

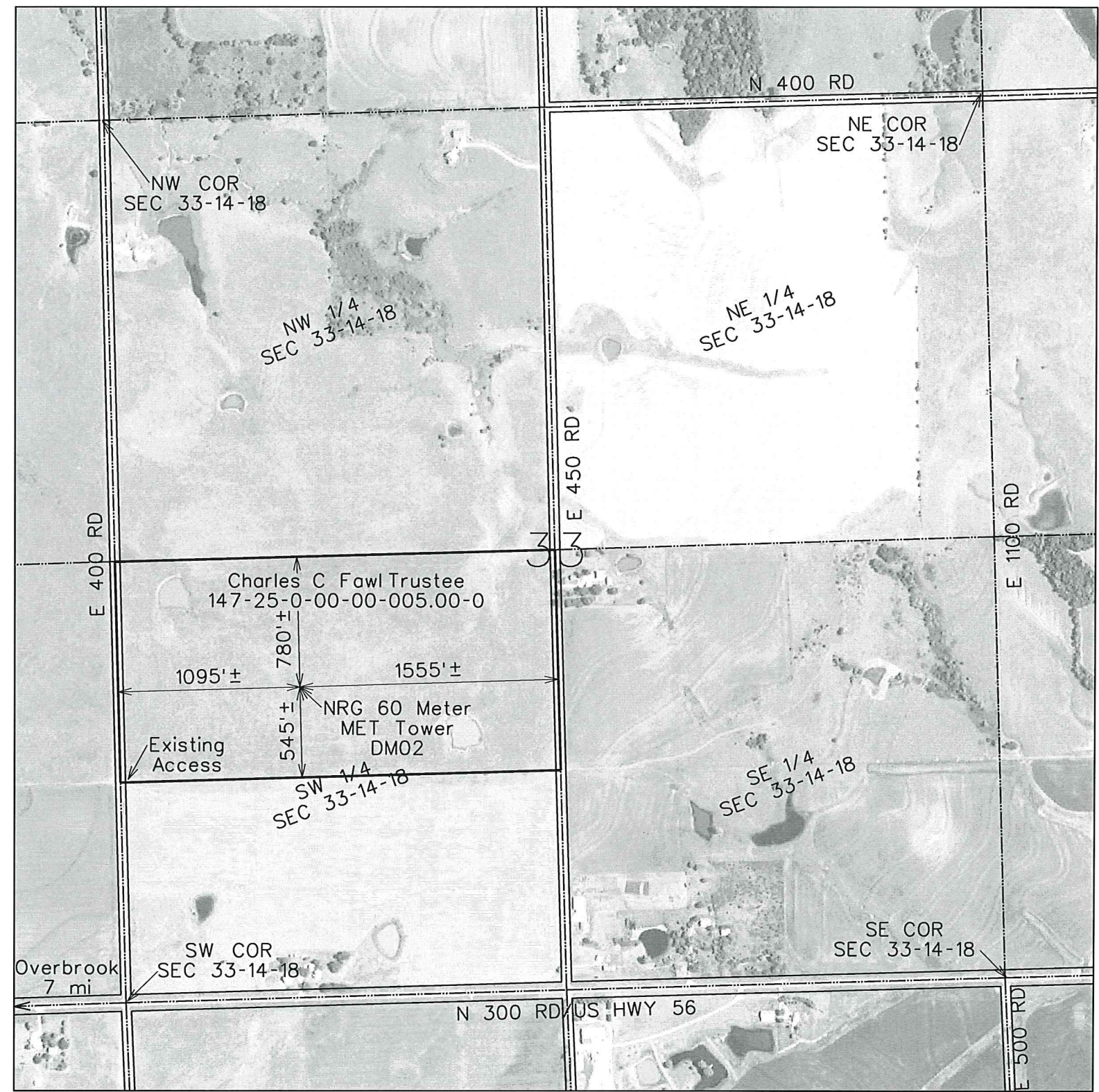
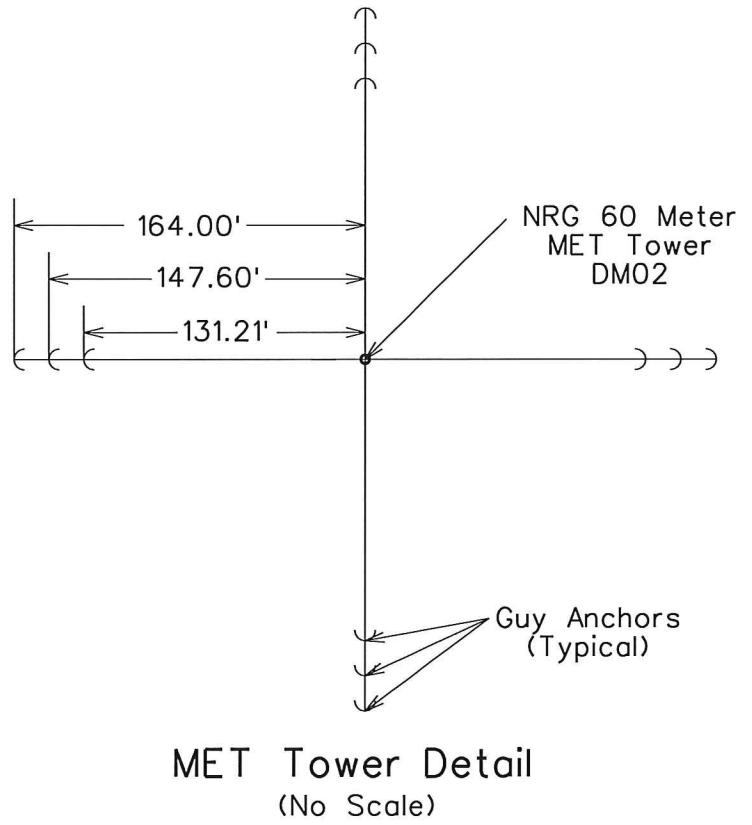


CUP-14-00002: Conditional Use Permit for a meteorological tower
Located between E 400 and E 450 Roads.



Nextera Energy - Pleasant Grove, KS

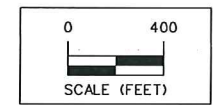
Site Plan for Proposed Meteorological Tower DM02 Sec 33-14-18, Douglas County, KS



Certificate of Report

I, Mike Schulte, Kansas Land Surveyor #1548, do hereby certify that this site plan drawing was prepared under my direct personal supervision on December 19, 2013 for Section 33, Township 14 South, Range 18 East, of the 6th P.M., Douglas County Kansas.

Mike Schulte
 Mike Schulte, L.S. # 1548
 1751 Madison Ave.
 Council Bluffs, Iowa 51503
 (712) 322-3202



ISSUE DATE: 12-19-2013

Note: Project location does not fall within any Flood Hazard Zone as shown on FIRM Maps # 20045C0270D dated 8/5/2010.

MARK	REVISION	DATE	BY
Engineer: JWK	Checked By: MGG	Scale: 1"=400'	Pg:
Technician: DW	Date: 11-06-13	Field Bk:	
Project No: 1131062			Sheet 1 of 1

NEXTERA ENERGY - PLEASANT GROVE, KS
 Site Plan for Proposed Meteorological Tower DM02 Sec 33-14-18 DOUGLAS COUNTY, KANSAS
SNYDER & ASSOCIATES, INC.
 1751 MADISON AVENUE
 COUNCIL BLUFFS, IA 51503
 712-322-3202 | www.snyder-associates.com



Project No: 1131062
 Sheet 1 of 1

1. Please provide narrative regarding the purpose of the request. In this narrative please state that communication equipment is not proposed or allowed. This will help to clarify the use.

The purpose of the request is to install a meteorological tower which will monitor and collect wind data (speed, direction, etc.) over a period of time up to a maximum of 5 ½ years (according to the terms of the agreement). This data will be used to validate the applicant's previous desk top analysis of available wind data in order to determine if this area possesses a wind resource that will support development of a wind energy center.

The proposed tower is an NRG 60 meter XHD Tall-tower that is approximately 196 feet in height and has a tubular structure. The tower sits on a baseplate and therefore requires no foundation or outside utilities. Four sets of guy wire anchors are placed at **40m (131')**, **45m (147')**, and the outermost guy anchor at **50m (164')**. The tower is constructed on the ground and is tilted into its final position with a temporarily anchored winch.

The tower will be striped orange and white and will have orange marker balls placed on the guy wires to increase visibility, per FAA recommendations, however FAA approval is not required because the tower stands below the 200' threshold.

2. Please clarify the time line. Is this CUP requested for 5 years or 6 to accommodate the removal of the equipment per the lease.

The normal operating timeline for meteorological towers are approximately 2 years. However, based on the terms and conditions of the property owner's agreement, the maximum time the applicant is allowed to have the met tower in place is 5 ½ years (5 year term with up to 6 months to remove the tower).

3. Please clarify the location of equipment in relationship to the property line. Two graphics in your attachments suggest it may or may not be over a property line.

The met tower is located in the northwest corner of the parcel. Below is a list of distanced to the property line in each direction, starting with the closest proximity:

- Western property line: 205 feet
- Northern property line: 490 feet
- Southern property line: 2,160 feet
- Eastern property line: 3,765 feet

The met tower has no foundation, therefore requires four sets of anchored guy wires to support the structure, with the farthest guy wire anchor placed approximately 164 feet from the base of the tower, therefore the entire structure and associated support structures will be installed away from the property line and roads.

4. How often is the tower accessed for maintenance?

Normal maintenance is conducted once a year unless there is extraordinary reason to visit the site. Extraordinary reasons could include damage from extreme wind, lightning strike, or if the data uplink is interrupted over a period of time.

5. Do the attachments move or rotate?

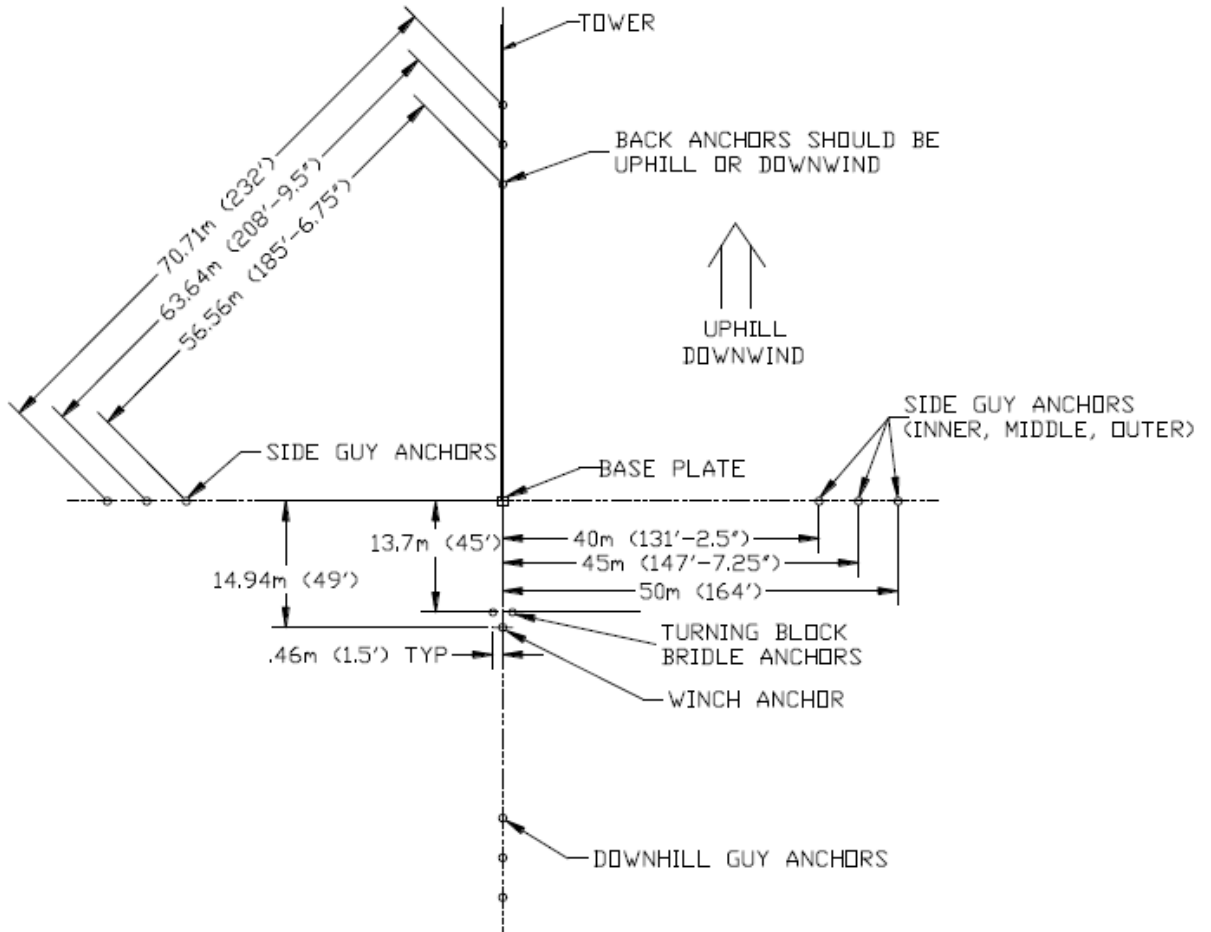
Below is a photo looking up at an installed meteorological tower. There are three pairs of anemometers placed at 30, 50, and 60 meters. The anemometers consist of three “cups” that rotate depending on wind speed and are approximately six inches across. Although the anemometers rotate, the rotation is contained within the approximately 6 inch diameter.



Closeup view of an anamometer

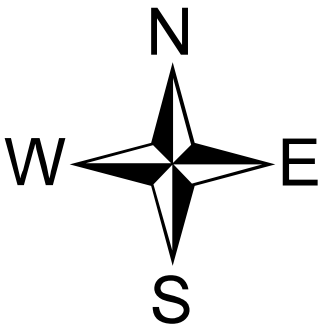
6. Please provide an elevation of the tower showing dimensions, height of equipment attached, any GPS units (that extend height), etc.

In addition to the first photo used to address the previous question, below is a cross section showing placement of guy wires and anchors. Neither the tower, nor any associated equipment will exceed the maximum height of 60m (approximately 196 feet).



We will prepare the landowner list and have it ready for submittal with the application.

Douglas County Air Uses



Legend

Towers

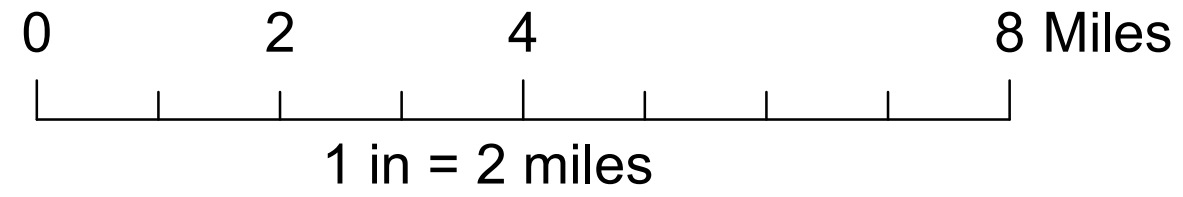
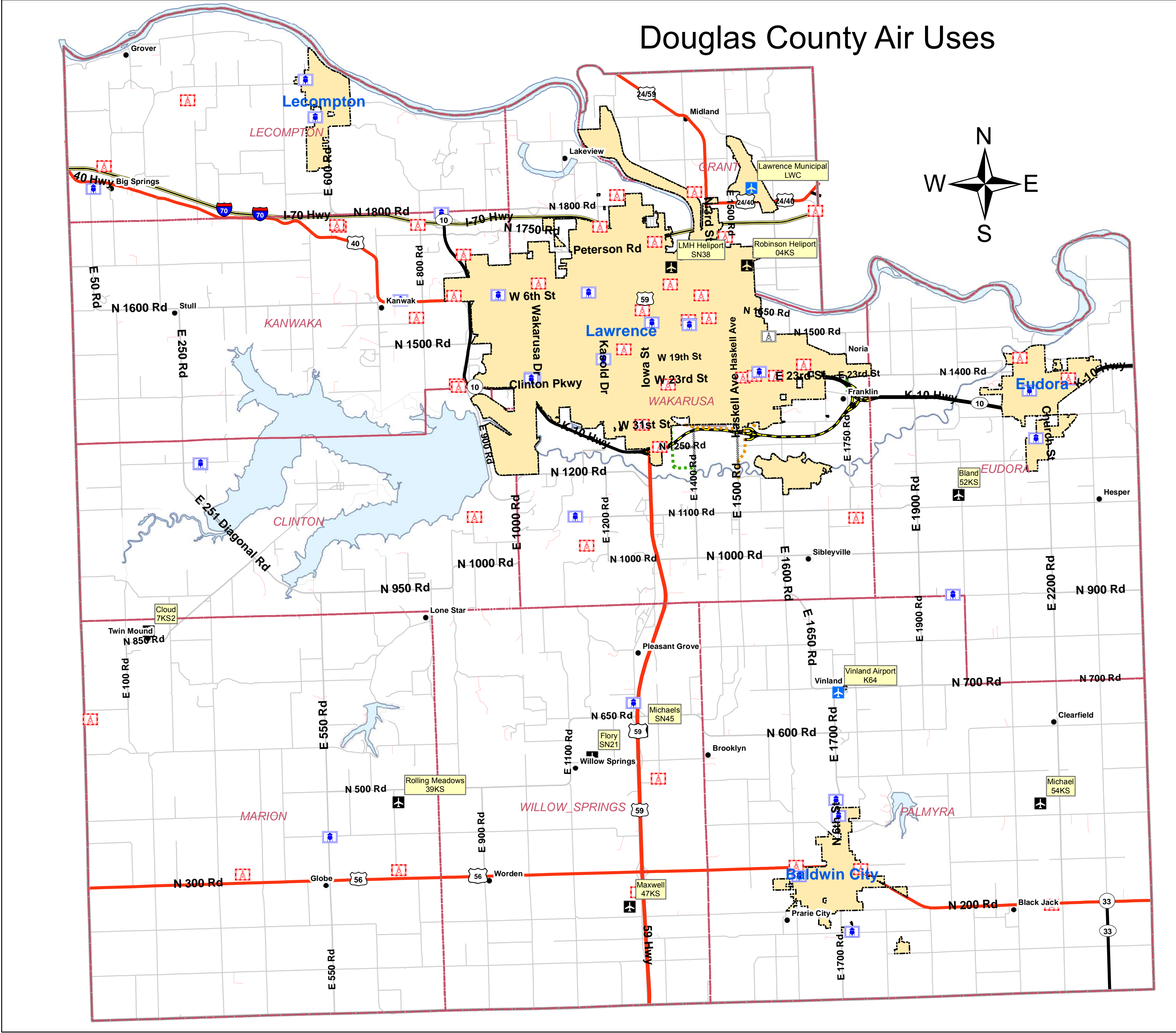
TYPE

- COMMUNICATION
- TV
- WATER

County Airports / Helipads

Entity

- Private
- Public
- City Limits - Douglas County
- township
- County Limits
- Water Bodies
- Townsites



ITEM NO. 2 CONDITIONAL USE PERMIT; METEOROLOGICAL TOWER; BETWEEN E 400 & E 450 ROADS, N OF N 300 RD (SLD)

CUP-14-00002: Consider a Conditional Use Permit for a 60 meter (196') meteorological tower to monitor and collect wind data located between E 400 and E 450 Roads and north of N 300 Road. Submitted by Tower Associates LLC on behalf of Charles and Doris Fawl, property owners of record.

STAFF PRESENTATION

Ms. Sandra Day presented the item.

APPLICANT PRESENTATION

No applicant present.

PUBLIC HEARING

No public comment.

COMMISSION DISCUSSION

Commissioner Josserand asked if approval would give legal right to hang cellular antennas on the tower.

Ms. Day said it was not structurally capable.

Commissioner Liese inquired about the height at which lighting was required.

Ms. Day said 200'.

Commissioner Denney inquired about the moratorium by County Commission.

Mr. McCullough said this item went through a process with the County Commission to make a determination. He said at first the County Commission felt this type of tower should be included in the moratorium but after a study session, to introduce aspects of wind farms, they gave way for this to move forward. He said wind turbines still had a moratorium.

Commissioner Rasmussen asked if the anemometer was wireless.

Ms. Day said she was not certain.

Commissioner Denney said the documentation he read indicated that it was wireless.

Commissioner Rasmussen asked if there was any concern about the wireless signal violating the recommended condition 2.(b) "Use of this tower shall be limited to meteorological equipment only and will not be allowed for use by telecommunication providers."

Ms. Day said no, it would not violate that term.

Commissioner Culver asked if the moratorium was extended if there would potentially be further applications of this nature.

Mr. McCullough said this applicant indicated this is what they need to complete their study in Douglas County.

Commissioner Rasmussen said in his job he saw a number of renewable energy projects, including wind projects, so he could foresee other requests by other applicants.

Commissioner von Achen inquired about the moratorium tasking Planning staff and Planning Commission to do a study.

Mr. McCullough said there were multiple parts with the overall plan. He said attorneys and other staff were working on potential model ordinances that would be brought to Planning Commission and recommended to County Commission for the wind turbine farm standards.

ACTION TAKEN

Motioned by Commissioner Liese, seconded by Commissioner Struckhoff, to approve the Conditional Use Permit for the meteorological tower and forwarding it to the County Commission subject to the following conditions:

- 1) Approval of the Conditional Use Permit shall be limited to 6 years from the date of the County Commission approval. Any extension of the time limit shall be allowed only per written request from the applicant and approval for extension by the County Commission following public notice.
- 2) The provision of a revised site plan that adds the following notes to the face of the drawing:
 - a) "A sign shall be posted on the tower or the exterior fence around the base of the tower with the name and telephone number of the tower owner/operator."
 - b) "Use of this tower shall be limited to meteorological equipment only and will not be allowed for use by telecommunication providers."
 - c) "This tower will be removed at the end of the Conditional Use Permit approval period."
 - d) "A change of ownership of the tower shall require a new Conditional Use Permit and public hearing by the Planning Commission." This will allow review of the intended use of the tower and public notice of the proposed change.

Commissioner Rasmussen asked if the land owner of record was responsible for removal of the meteorological tower.

Ms. Day said ultimately, yes.

Unanimously approved 10-0.